

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>ASSISTANCE ID NO.</b>			<b>DATE OF AWARD</b> 08/28/2008	
		<b>PRG</b>	<b>DOC ID</b>	<b>AMEND#</b>		
		<b>BF - 96024102 - 0</b>			<b>MAILING DATE</b> 09/04/2008	
		<b>TYPE OF ACTION</b> New			<b>PAYMENT METHOD:</b>	
<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> Las Vegas Finance Center FAX # 702-798-2423				
<b>RECIPIENT:</b> City of Portland 1120 SW 5th Ave, Rm 1000 Portland, OR 97204 EIN: 93-6002236		<b>PAYEE:</b> City of Portland 1120 SW 5th Ave, Rm 1000 Portland, OR 97204				
<b>PROJECT MANAGER</b>		<b>EPA PROJECT OFFICER</b>		<b>EPA GRANT SPECIALIST</b>		
Clark Henry 1120 SW 5th Ave, Rm 1000 Portland, OR 97204 E-Mail: clarkh@bes.ci.portland.or.us Phone: 503-823-5863		Mike Slater 805 SW Broadway, Suite 500, ECL-000 Portland, OR 97205 E-Mail: Slater.Mike@epamail.epa.gov Phone: 503-326-5872		Kathy Tsing-Choy Grants Administration Unit, OMP-145 E-Mail: Tsing-Choy.Kathy@epa.gov Phone: 206-553-4688		
<b>PROJECT TITLE AND DESCRIPTION</b> City of Portland Citywide Brownfield Assessment Grant: Hazardous Materials Portland Brownfield Program will perform brownfield site assessments and provide technical assistance at properties perceived to be contaminated with hazardous substances. Assessments will provide information needed to protect human health and the environment in the communities around them when these properties are redeveloped.  This assistance agreement is fully funded and approves the workplan and budget submitted with the application dated June 10, 2008.						
<b>BUDGET PERIOD</b> 10/01/2008 - 09/30/2011		<b>PROJECT PERIOD</b> 10/01/2008 - 09/30/2011		<b>TOTAL BUDGET PERIOD COST</b> \$200,000.00		
				<b>TOTAL PROJECT PERIOD COST</b> \$200,000.00		
<b>NOTICE OF AWARD</b>						
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 \$200,000. EPA agrees to cost-share <u>100.00%</u> 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.						
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>			
<b>ORGANIZATION / ADDRESS</b>			<b>ORGANIZATION / ADDRESS</b>			
EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			U.S. EPA, Region 10 Office of Environmental Cleanup 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>						
<b>SIGNATURE OF AWARD OFFICIAL</b> Digital signature applied by EPA Award Official		<b>TYPED NAME AND TITLE</b> Armina K. Nolan, Manager - Grants Administration Unit		<b>DATE</b> 08/28/2008		
<b>AFFIRMATION OF AWARD</b>						
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>						
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b> Clark Henry, Portland Brownfields Program Director		<b>DATE</b>		

# 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	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 200,000	\$ 200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	0810NEG022	08	E4	10N3AG7	402D79E	4114	G000NY00		200,000
									200,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$5,500
4. Equipment	\$0
5. Supplies	\$14,000
6. Contractual	\$173,000
7. Construction	\$0
8. Other	\$7,500
9. Total Direct Charges	\$200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$200,000
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 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](mailto: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](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

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

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

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

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

**11. Management Fees**

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

## 12. Reimbursement Limitation

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

## 13. Trafficking Victims Protection Act of 2000

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

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

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

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

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

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

### GENERAL COMPLIANCE, 40 CFR, Part 33

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

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

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

### Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement is over \$250,000; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is over \$250,000. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Oregon Department of Environmental Quality** as follows:

MBE: SUPPLIES 0.43%; SERVICES 2.58%; EQUIPMENT 1.08%  
WBE: SUPPLIES 1.28%; SERVICES 4.45%; EQUIPMENT 2.69%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Oregon Department of Environmental Quality**.

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

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

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

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

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

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

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

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

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

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

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE**

**accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31<sup>st</sup> and September 30<sup>th</sup> 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 30<sup>th</sup> and October 30<sup>th</sup>). Reports should be sent to the EPA Region 10, Grants Administration Unit, 1200 Sixth Avenue, Suite 900, Mailcode: OMP-145, Seattle, WA 98101. For further information, please contact Greg Luchey at (206) 553-2967, email: [Luchey.Greg@epa.gov](mailto:Luchey.Greg@epa.gov). Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.**

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

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

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

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

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

#### **15. Payment to Consultants**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 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**

#### **Brownfields Assessment Grant Terms and Conditions**

Please note that these Terms and Conditions (T&Cs) apply to brownfields grants under CERCLA 104(k) and do not apply to pre-FY 2003 grants subject to 104(d).

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

**NOTE:** For the purposes of these Terms and Conditions the term "assessment" includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act

**(CERCLA) 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA approved work plan.**

**A. Federal Policy and Guidance**

1. a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall insure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.
- b. CERCLA 104(g) requires that 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. If the CAR uses funds awarded under this agreement to contract for construction, repair or alteration work, it must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
- c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.
- d. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR 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. Eligible Brownfields Site Determinations**

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.
  - b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):

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

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

- b. Documentation must include the identity of the State program official contacted, the State official’s telephone number, the date of the contact, and a summary of the discussion relating to the state’s determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
- c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

### **A. Term of the Agreement**

- 1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR’s request.
- 2. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the Agency may terminate this agreement.
- 3. Assessment funding for any eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA and then funding is not to exceed \$350,000 at the site subject to the waiver.

### **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 also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under §107 of CERCLA.
  - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

### **C. Cooperative Agreement Recipient Roles and Responsibilities**

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

(Note: Cooperative Agreement Recipients expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.)

### **D. Quarterly Progress Reports**

1. The CAR must submit progress reports on a quarterly basis (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 output/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 contaminated brownfields sites.
  - e. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where assessment activities were completed. To the extent consistent with the EPA approved work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:*
    1. *Acres per property*
    2. *Assessments started/completed*
    3. *No cleanup required*

4. *Types of contaminants found*
  5. *Acres of greenspace created*
  6. *Engineering/institutional controls required, what type and whether they are in place*
  7. *Cleanup plans*
  8. *Redevelopment underway*
  9. *Funds leveraged*
  10. *Jobs leveraged*
  11. *Health monitoring studies, insurance, institutional controls funded*
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific sites under this grant.
  3. 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.
  4. The CAR must complete and submit relevant portions of the Property Profile Form reporting the commencement of a Phase I assessment, the expenditure of \$1,000 or more of grant funds at a property or the completion of a property assessment. 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 (ACRES), 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>
  5. In accordance with 40 C.F.R. § 31.40 (d), 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. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:
  - a. Determining whether assessment activities at a particular site are authorized by CERCLA 104(k);
  - b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section B.
  - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.
2. ***Local Governments only.*** *No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in Task \_\_\_ of the EPA approved work plan. The CAR must maintain records on funds that will be used to carry out Task \_\_\_ of its EPA approved work plan to ensure that no more than 10% of its funds are used for brownfield program development and implementation (including monitoring of health and institutional controls).*

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

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

- a. Cleanup activities;
  - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
  - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
  - d. To pay for a penalty or fine;
  - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;
  - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
  - h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.
  - b. Ineligible grant administration costs include direct costs for:
    - (1) Preparation of applications for Brownfields grants;
    - (2) Record retention required under 40 CFR 31.42;
    - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
    - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
    - (5) Maintaining and operating financial management systems required under 40 CFR 31;
    - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
    - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
    - (8) Close out under 40 CFR 31.50.
3. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
  - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

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

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

## **IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS**

### **A. Authorized Assessment Activities**

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

### **B. Quality Assurance (QA) Requirements**

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

### **C. Completion of Assessment Activities**

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

### **D. All Appropriate Inquiry**

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

## **V. CONFLICT OF INTEREST: APPEARANCE OF LACK OF IMPARTIALITY**

### **A. Conflict of Interest**

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

- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

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

## **VI. PAYMENT AND CLOSEOUT**

### **A. Payment Schedule**

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

### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50.

**END OF ASSISTANCE AGREEMENT NO. BF-960241-02-0**