U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 00D27514	
MODIFICATION NUMBER: 0	**DATE OF AWARD** 10/16/2014
PROGRAM CODE: BF	
TYPE OF ACTION New	**MAILING DATE** 10/23/2014
PAYMENT METHOD: ASAP	**ACH#** 40496

RECIPIENT TYPE:
Municipal

Send Payment Request to:
Las Vegas Finance Center

RECIPIENT:
City of Durham
101 City Hall Plaza
Office of Economic and Workforce Development
Durham, NC 27701
EIN: 56-6000225

PAYEE:
City of Durham
101 City Hall Plaza
Office of Economic and Workforce Development
Durham, NC 27701

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Grace Dzidzienyo 101 City Hall Plaza Office of Economic and Workforce Development Durham, NC 27701 **E-Mail:** grace.dzidzienyo@durhamnc.gov **Phone:** 919-560-4965	Nicole Bates 61 Forsyth Street Atlanta, GA 30303-8960 **E-Mail:** Bates.Nicole@epa.gov **Phone:** 404-562-9966	Sherry Miles Grants and Audit Management Section **E-Mail:** miles.sherry@epa.gov **Phone:** 404-562-8396

PROJECT TITLE AND DESCRIPTION
Brownfields Assessment and Cleanup Cooperative Agreements

This action provides partial funding in the amount of $199,999 to the City of Durham to conduct community-wide assessments at Brownfields sites potentially contaminated with hazardous substances and petroleum products. The recipient may also develop a site inventory, prioritize sites and conduct Phase I and/or Phase II assessments. Funds may also be used for public outreach, community involvement, and cleanup/reuse planning activities

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2014 - 09/30/2017	10/01/2014 - 09/30/2017	$399,999.00	$399,999.00

NOTICE OF AWARD

Based on your Application dated 09/04/2014 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $199,999. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $199,999. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
61 Forsyth Street Atlanta, GA 30303-8960	U.S. EPA, Region 4 Resource Conservation and Recovery Act (RCRA) Division 61 Forsyth Street Atlanta, GA 30303-8960

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

Digital signature applied by EPA Award Official Dorothy Rayfield - Chief - Grants & Acquisition Management Branch	**DATE** 10/16/2014

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 199,999	$ 199,999
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	$ 199,999	$ 199,999

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
-	1404VT4046	14	E4	04V6AG7	301D79	4114	G400NY00	-	199,999
									199,999

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$35,000
2. Fringe Benefits	$0
3. Travel	$8,000
4. Equipment	$0
5. Supplies	$2,000
6. Contractual	$354,999
7. Construction	$0
8. Other	$0
9. Total Direct Charges	$399,999
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	$399,999
12. Total Approved Assistance Amount	$399,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$199,999
15. Total EPA Amount Awarded To Date	$199,999

Administrative Conditions

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: http://www.epa.gov/ogd/tc_jan_2014.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

The EPA repository for the general terms and conditions by year can be found at: http://www.epa.gov/ogd/tc.htm.

1. **UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISE**

GENERAL COMPLIANCE, 40 CFR, Part 33
The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities 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 participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Accepting the Fair Share Objectives/Goals of Another Recipient
The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **STATE OF NORTH CAROLINA** as follows:

MBE: CONSTRUCTION 8.00%; SUPPLIES 7.00%; SERVICES 7.00% ; EQUIPMENT 7.00%
WBE: CONSTRUCTION 5.00% SUPPLIES 9.00% ; SERVICES 9.00%; EQUIPMENT 9.00%

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 **THE STATE OF NORTH CAROLINA**.

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.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) 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, Subpart E
MBE/WBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

(a) there are any funds budgeted in the contractual, equipment or construction lines of the award;
(b) $3,000 or more is included for supplies; or
(c) there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b).

Based on EPA's review of the proposed budget, this award likely meets one or more of the conditions as described above, therefore, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

However, if this award does not meet the conditions as described above, the recipient should provide Charles Hayes (hayes.charles@epa.gov) with a justification and budget details indicating that based on the planned budget, this award is **not** subject to the DBE reporting requirements.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the last report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Last reports are due 90 days after the end of the project period.

The reporting requirement is based on planned procurements. Recipients with funds budgeted for non-supply procurement and/or $3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to

U.S. Environmental Protection Agency
Grants Management Office
SNAFC, 61 Forsyth Street, SW
Atlanta, GA 30303-8690
Attn: Sherry Miles and/or miles.sherry@epa.gov (optional)

The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

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.

2. **UNLIQUIDATED OBLIGATIONS**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the end of the reporting quarter

The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31.

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at http://www.epa.gov/ocfo/finservices/forms.htm . All FFRs must be submitted to the Las Vegas Finance Center: US EPA, Las Vegas Finance Center, 4220 S. Maryland Pkwy, Bld C, Rm 503, Las Vegas, NV 89119, or by Fax to: 702-798-2423 or LVFC-grants@epa.gov

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

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

Programmatic Conditions

Assessment Terms and Conditions

These Terms and Conditions (T&Cs) apply to
Brownfields Assessment Grants awarded under CERCLA § 104(k).

I. GENERAL FEDERAL REQUIREMENTS

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

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2014 competition for Brownfields assessment cooperative agreements. *However, the CAR may not expend ("draw down") funds to carry out this agreement until the EPA Project Officer approves the final work plan.*

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

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

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

B. Eligible Brownfield 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 CERCLA § 101(39), whether the CAR is the potentially responsible party under CERCLA § 107 and/or has defenses to liability.

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 may request a property-specific funding determination. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how

financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

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

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

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

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

c. If the State chooses not to make the determinations described in Section I.B.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 will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before 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 Section I.B.2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

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

2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement (for Assessment Coalitions) is in place.

3. Assessment funding for an eligible brownfield site may not exceed $200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed $350,000 at the site.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

a. Substantial involvement by EPA generally includes administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.

b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in CERCLA § 104(k)(4)(B)(i)(IV) applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under § 107 of CERCLA. (See Section

II.C.3 for more information on subgrants.)

c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

d. EPA may waive any of the provisions in term and condition Section II.B.1. with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.

b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.

c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under 2 CFR Part 225 (for state, local and tribal governments) as applicable.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.

2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.

3. Subgrants are defined at 40 CFR 31.36. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the $200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding $200,000. In no case may EPA funding exceed $350,000 on a site receiving a waiver.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

6. *The CAR will provide project updates to the State Brownfields or Voluntary Cleanup Program (VCP) contact on a regular basis.*

a. The CAR will make the State aware of all site-specific Phase II assessment activities to be initiated.

b. The CAR will provide the State an opportunity to review and comment on all technical reports, including Quality Assurance Project Plans (QAPPs), sampling plans, Analysis of Brownfields Cleanup Alternatives (ABCAs), and cleanup plans.

c. The CAR should involve the State in any site eligibility determinations.

7. Competency of Organizations Generating Environmental Measurement Data: In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

D. Quarterly Progress Reports

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
   a. Summary of approved activities performed during the reporting quarter, summary of the performance

outputs/outcomes achieved during the reporting quarter, a description of problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.

b. An update on project schedules and milestones.

c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.

d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds. *If applicable, the budget must provide separate accounting of costs incurred at hazardous substances brownfields sites and petroleum-only brownfields sites.*

2. *The quarterly progress reports must clearly identify which activities performed during the reporting period were conducted with EPA funds and must relate EPA-funded activities to the objectives and milestones in the EPA approved work plan.*

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

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

E. Property Profile Submission

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

2. *The CAR must obtain approval from the EPA Project Officer before expending cooperative agreement funds to purchase computer supplies to comply with the on-line reporting system activities.*

F. Final Report

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

G. Geospatial Data Standards

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

H. Competency of Organizations Generating Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA project officer for this award.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

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

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities

described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:

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

b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);

c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.

d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under Section 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 by the CAR for monitoring of health and institutional controls. The CAR must maintain records on funds that will be used to carry out these task as identified in the EPA approved work plant.*

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

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

a. 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 2 CFR Part 225 for state, local and tribal governments, as applicable.

2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include <u>all indirect costs</u> under 2 CFR Part 225 for state, local and tribal governments, as applicable.

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, and 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 brownfield 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 (i.e. fees) in an interest bearing account.

a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.

b. Interest earned on program income is considered additional program income.

c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 40 CFR 31.21(f).

IV. ENVIRONMENTAL ASSESSMENT 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 data 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.

2. *The CAR must have an EPA approved QAPP in place before beginning each property specific environmental assessment, funded wholly or in part by this agreement, that includes sampling and analysis of environmental media. The CAR should allow EPA adequate time (generally 45 days) for review and approval. The QAPP should be consistent with the EPA Region 4 "Brownfields Quality Assurance Project Plans (QAPPs) Interim Instructions: Generic QAPP and Site Specific QAPP for Brownfields Site Assessments and/or Cleanups," July 2010 and later revisions.*

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 E1527-13 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements Checklist for Assessment Grant Recipients", (Publication Number: EPA 560-R-11-030). 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.

2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that the EPA Project Officer will provide to the recipient. The checklist also is available on the EPA website at http://www.epa.gov/brownfields/aai/AAI-Reporting-fact-sheet-and-checklist-062111-Final.pdf.

   a. An ***opinion*** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

   b. An identification of ***"significant" data gaps*** (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

   c. ***Qualifications*** **and** ***signature*** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

      · *"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."*

      · *"[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."*

      Note: Please use either "I" or "We."

   d. In compliance with §312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation***, if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 40 CFR 31.43(a)(2). If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 40 CFR 31.43 and 2 CFR Part 180.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

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

   (i) the affected party,

   (ii) any member of his immediate family,

   (iii) his or her partner, or

   (iv) an organization which employs, or is about to employ, any of the above,

has a financial or other interest in the subgrant recipient.

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

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

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

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.

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

a. The CAR must submit the following documentation:

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

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

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

3. A Final MBE/WBE Report (EPA Form 5700-52A) to the EPA Project Officer. The reporting form can be found at the EPA website http://www.epa.gov/osbp/dbe_reporting.htm.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the EPA Project Officer.

The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.