



U. S. ENVIRONMENTAL PROTECTION AGENCY NOTICE OF AWARD

RECIPIENT NAME AND ADDRESS:

Honorable Jim Newberry
Mayor
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

BF-95461610-1

Assistance Agreement

Assistance Amendment

Increase

Decrease

Time Extension

Administrative

Enclosed are two copies of an Assistance Agreement from the U.S. Environmental Protection Agency.

To accept this Notice of Award, please carefully review any terms and conditions, sign¹, and return one original copy to the following address within 21 days² of the mailing date on the Assistance Agreement:

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 4
GRANTS MANAGEMENT OFFICE
61 FORSYTH STREET, SW
ATLANTA, GA 30303

ATTN: Shantel Shelmon

The other original should be retained for your official records and copies distributed within your organization as needed. Please note, funds will not be available for draw until we receive your countersigned affirmation of the award.

To assist you with your post award management responsibilities, please see "*Reporting Forms and Guidance for Administration of Your Assistance Agreement³*." This document contains important post-award reporting requirements and instructions on how to receive payments. To view this and other EPA grant-related information, visit our Region 4 Grants Office website at:

www.epa.gov/region4/grants/

Please reference the EPA Assistance Number on all future correspondence regarding this Assistance Agreement. If you have any questions, you may contact the Grants Specialist identified above at (404) 562-9817 shelmon.shantel@epa.gov.

¹ Must be signed by authorized representative as shown on the Affirmation of Award signature block or formally authorized delegate.

² Failure to countersign and return within 21 days of the mailing date may result in withdrawal of this award.

³ Please contact your Grant Specialist if you need a paper copy of this document.

U.S. Environmental Protection Agency
Region 4
Grants Management Office

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	ASSISTANCE ID NO.			DATE OF AWARD 08/16/2011
		PRG	DOC ID	AMEND#	
		BF - 95461610 - 1			MAILING DATE 08/23/2011
		TYPE OF ACTION Augmentation: Increase			ACH# 40317
PAYMENT METHOD: ACH					

RECIPIENT TYPE: County	Send Payment Request to: Las Vegas Finance Center
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RECIPIENT: Lexington-Fayette Urban County Government 200 East Main Street Lexington, KY 40507 EIN: 61-0858140	PAYEE: Lexington-Fayette Urban County Government 200 East Main Street Lexington, KY 40507
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PROJECT MANAGER Tom Webb 200 East Main Street Lexington, KY 40507 E-Mail: tomw@lexingtonky.gov Phone: (895) 425-2808	EPA PROJECT OFFICER Bob Rosen 61 Forsyth Street Atlanta, GA 30303-8960 E-Mail: rosen.bob@epa.gov Phone: 404-562-8761	EPA GRANT SPECIALIST Shantel Shelmon Grants Management Office E-Mail: shelmon.shantel@epa.gov Phone: 404-562-9817
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PROJECT TITLE AND EXPLANATION OF CHANGES
Brownfields Assessment and Cleanup Cooperative Agreements

This action approves an award in the amount of \$200,000 to the Lexington-Fayette Urban County Government to conduct community wide assessments at brownfields sites potentially contaminated with hazardous substances. This action also extends the project and budget period end date from 06/30/13 to 09/30/14 to allow them additional time to accomplish the goals in their workplan.

BUDGET PERIOD 07/01/2010 - 09/30/2014	PROJECT PERIOD 07/01/2010 - 09/30/2014	TOTAL BUDGET PERIOD COST \$400,000.00	TOTAL PROJECT PERIOD COST \$400,000.00
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NOTICE OF AWARD

Based on your application dated 05/28/2010, 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 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$400,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

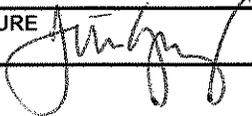
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
61 Forsyth Street Atlanta, GA 30303-8960	U.S. EPA, Region 4 Resource Conservation and Recovery Act Division 61 Forsyth Street Atlanta, GA 30303-8960

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

SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official	TYPED NAME AND TITLE Elaine Curles, Grants Management Officer	DATE 08/16/2011
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AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE 	TYPED NAME AND TITLE Jim Newberry, Mayor Jim Gray Mayor	DATE 8/31/2011
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EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 200,000	\$ 200,000	\$ 400,000
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 0	\$	\$ 0
State Contribution	\$ 0	\$	\$ 0
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 200,000	\$ 200,000	\$ 400,000

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
	1104VT1031	11	E4	04V4AG7	402D79E	4114	G400NY00		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	\$8,150
4. Equipment	\$0
5. Supplies	\$2,200
6. Contractual	\$389,650
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$400,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	\$400,000
12. Total Approved Assistance Amount	\$400,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$200,000
15. Total EPA Amount Awarded To Date	\$400,000

Administrative Conditions

The Following Administrative Conditions Have Been Revised:

7. 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, LVFC, PO Box 98515, Las Vegas, NV 89193, or by Fax to: 702-798-2423.

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

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

13. SINGLE AUDIT ACT

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient MUST submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

14. TRAFFICKING IN PERSONS

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

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

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

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

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C.

- 7104(g)), and
- ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:**
1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

Programmatic Conditions

The Following Programmatic Conditions Supersedes the Previous Award Remain the Same

2011 Brownfields Assessment Terms and Conditions for Region 4

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 brownfields sites as described in the EPA approved work plan.

A. Federal Policy and Guidance

1.
 - a. Cooperative Agreement Recipients By awarding this cooperative agreement EPA has approved the proposal the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2011 competition for Brownfields assessment cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.
 - b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that 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 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 (i.e. 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 Brownfields Site Determinations

1. a. The CAR must provide information to EPA about sitespecific work prior

to incurring any costs under this cooperative agreement for sites that have not already been preapproved 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 attests (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 (1) the site is of relatively low risk (2) there is no viable responsible party, and (3) 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 will make all determinations on the eligibility of petroleum contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country as defined at 18 U.S.C. 1151). 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. This cooperative agreement is contingent on EPA approval of a Final Work Plan. Unless EPA has notified the CAR that the cooperative agreement work plan has been approved prior to award, a **Final Work Plan** must be approved by EPA within 60 calendar days following the date of award. Any expenditure incurred by the CAR prior to EPA approval of the Work Plan must be consistent with the approved Work Plan in order to be reimbursed by EPA.
2. The term of this agreement is three years from the date of award unless otherwise extended by EPA at the CAR's request.
3. 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 PO 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 is in place within one and a half years.
3. Assessment funding for any eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA. Following a granted waiver, 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; 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 IB. 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 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. (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 IIB.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.
3. 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 QAPPs, sampling plans, ABCAs, cleanup plans, and other technical reports.
 - c. States should also be involved in any site eligibility determinations

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 communitywide 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** to the EPA Project Officer. Quarterly progress reports must include
 - a. A narrative summary of approved activities performed during the reporting quarter; summary of the performance outputs/outcomes achieved during the quarter; a description of problems encountered 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 page with the following headings (A) Current Approved Budget; (B) Costs Incurred this Quarter; (C) Costs Incurred to Date; and (D) Total Remaining Funds.
 - e. If applicable, quarterly reports must provide separate accounting of costs incurred at hazardous substances brownfields sites and petroleum-only brownfields sites
2. Recipient quarterly reports must clearly identify which activities performed during the reporting period undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the 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. 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
 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

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 adequate computer supplies to complete on-line reporting activities.

F. Final Report

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.

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 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 itself for monitoring of health and institutional controls. The CAR must maintain records on funds that will be used to carry out the tasks as identified in the EPA-approved work plan.

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.
4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

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. 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. 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.

2. **Quality Assurance Project Plan (QAPP):** The CAR, or its service agent/contractor(s), must have an **EPA approved QAPP** in place before beginning **each** property specific field activity, 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 E1527-05 "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 and Suggestions on Report Content" (Publication Number: EPA 560-F-06-244). 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 Officer as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at www.epa.gov/brownfields.
3. 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.
4. 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.

5. **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.”

6. 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

EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements a40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-05). 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 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described in the EPA-approved work plan.

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 I.E.

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

U.S. EPA Las Vegas Finance Center
P.O. Box 98515
Las Vegas, NV 89193-8515

Fax: (702) 798-2423

<http://www.epa.gov/ocfo/finservices/payinfo.htm>

Link to form: <http://www.epa.gov/ogd/forms/adobe/SF425.pdf>

3. A Final MBE/WBE Report (EPA Form 5700-52A) to the regional office. You may access the form at:
http://www.epa.gov/ogd/forms/adobe/5700_52a_sec.pdf

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