



RESOLUTION No. 17-592

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION AUTHORIZING ADOPTION OF A MEMORANDUM OF AGREEMENT (MOA) BETWEEN COUNTY OF NEVADA ENVIRONMENTAL HEALTH DEPARTMENT, CITY OF GRASS VALLEY AND CITY OF NEVADA CITY TO ENSURE COLLABORATION WITH THE IMPLEMENTATION OF THE GOLD COUNTRY REDEVELOPMENT COALITION COMMUNITY WIDE ASSESSMENT GRANT

WHEREAS, the County of Nevada Environmental Health Department agreed to support the City of Grass Valley with Brownfields Assessment Coalition application for Gold Country Redevelopment Coalition Community Wide Assessment Grant (“Grant”); and

WHEREAS, the County of Nevada Environmental Health Department and the City of Nevada City agreed to be Coalition members with the City of Grass Valley; and

WHEREAS, the purpose of the coalition approach was to better leverage EPA funds to provide for a greater level of hazardous assessments on properties within the cities and the spheres of influence, which in turn would provide a greater and broader community benefit; and

WHEREAS, under the provisions of said Grant the coalition must assign one “lead” entity to submit the application, to be the Grant recipient that will administer all aspects of the Grant if approved, and to act on behalf of the coalition; and

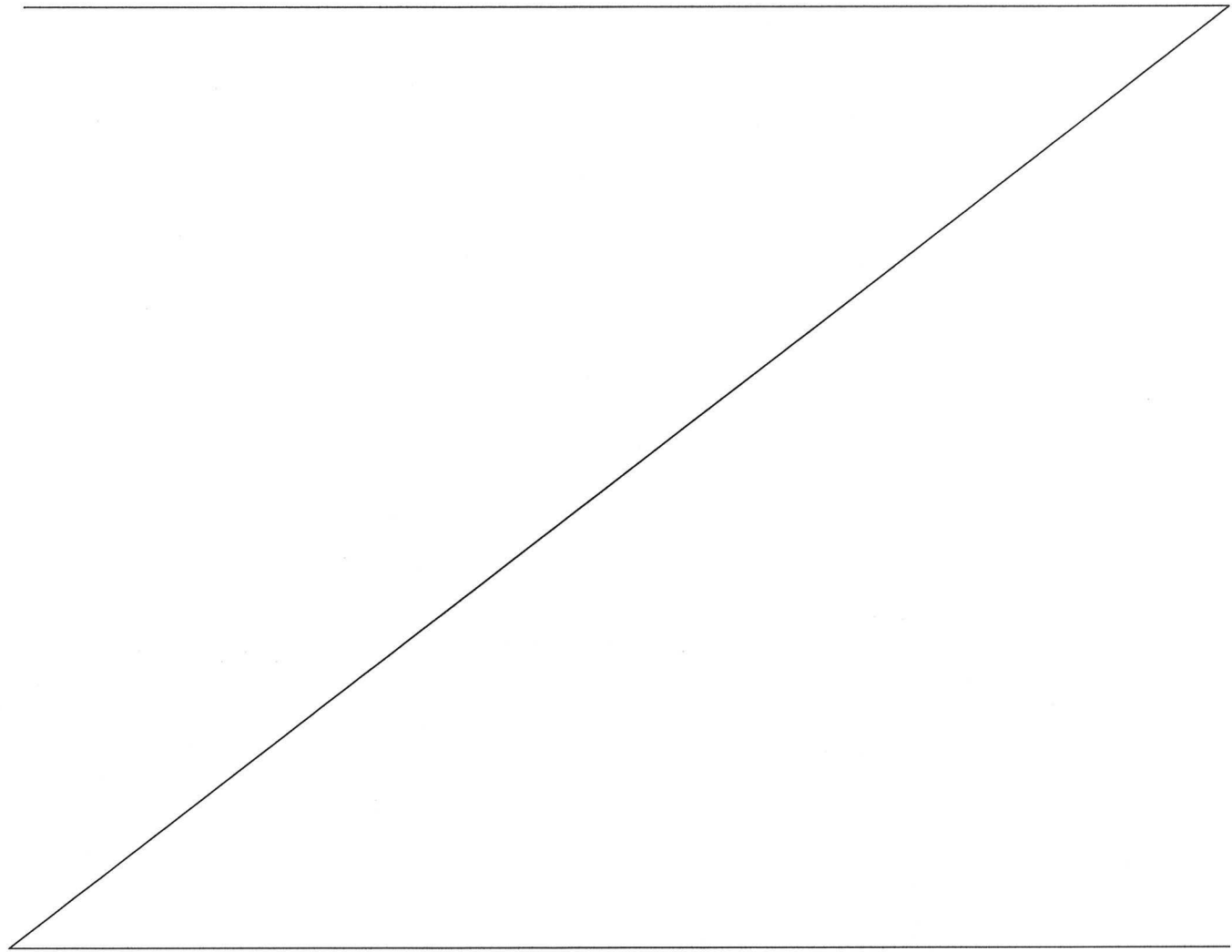
WHEREAS, on December 20, 2016, the City of Grass Valley, acting as the lead entity on behalf of Nevada City and Nevada County, submitted a coalition Grant for the 2016 United States Environmental Protection Agency (EPA) Brownfields Assessment Grant; and

WHEREAS, on September 29, 2017, the City of Grass Valley received the Cooperative Agreement from the EPA, which confirms the Notice of Award and related Grant Administrative Terms and Conditions, and which set forth the coalitions legal responsibilities to EPA; and

WHEREAS, the Notice of Award requires coalition recipients to enter into a Memorandum of Agreement (MOA), which documents the mutual agreed upon site selection process, identifies and describes the role of each coalition member, and establishes the relationships necessary to achieve the project’s goals.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. That County of Nevada Board of Supervisors hereby approves the Nevada County Environmental Health Department as an advisory coalition member to assist the lead entity, City of Grass Valley, in implementing the Grant.
2. The Chair of the Board of Supervisors authorizes the Director of Environmental Health to sign the MOA and other advisory documents associated with the Grant.



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 12th day of December, 2017, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Hank Weston and Richard Anderson

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Hank Weston, Chair

12/12/2017 cc: EH*
AC* (Hold)

1/30/2018 cc: EH*
AC* (Release)
NC & GV

BROWNFIELDS ASSESSMENT COALITION
MEMORANDUM OF AGREEMENT
BETWEEN THE FOLLOWING PARTIES:
Grass Valley, Nevada City, Nevada County

This Memorandum of Agreement documents the roles and responsibilities of the various parties involved in the Assessment Coalition with regard to EPA Cooperative Agreement No: BF-99T62701.

1. On September 19, 2017, EPA awarded the Cooperative Agreement to the Lead Coalition Member City of Grass Valley. The grant period is October 1, 2017 through September 30, 2020. The City of Grass Valley is responsible to EPA for management of the cooperative agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.
2. It is the responsibility of the City of Grass Valley to provide timely information to the other Coalition Partners regarding the management of the cooperative agreement and any changes that may be made to the cooperative agreement over the period of performance.
3. The Coalition Partners are Nevada City and Nevada County. The contact information is as follows:

Nevada City

Project Manager: Catrina Olsen
Address: 317 Broad Street, Nevada City, CA 95959
Phone Number: (530) 265-2496
Email Address: Catrina.Olson@nevadacityca.gov

Nevada County

Project Manager: Amy Irani
Address: 950 Maidu Ave., Nevada City, CA 95959
Phone Number: (530) 265-1222
Email Address: Amy.Irani@co.nevada.ca.us

4. Activities funded through the cooperative agreement may include inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, and outreach materials and implementation, and other eligible activities. The City of Grass Valley may retain consultant(s) and contractors under 40 CFR 30.36 to undertake various activities funded through the cooperative agreement and may award subgrants to other coalition members under 40 CFR 31.37 for assessment projects in their geographic areas. Subgrantees are accountable to the City of Grass Valley for proper expenditure of funds.
5. The Lead Coalition Member will procure the consultant(s) in compliance with 40 CFR 31.36 requirements. The Lead Coalition Member will issue the Request for Proposals or Request for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection and award of contracts. The City of Grass Valley will consult with other coalition members in making selections of consultants and contractors and negotiating the terms of agreements.
6. The Lead Coalition Member, in consultation with the Coalition Partners, will work to develop a site selection process based on agreed upon factors and will ensure that a minimum of five sites are assessed over the life of the cooperative agreement. Selected sites will be submitted to EPA for prior approval to ensure eligibility. Note: *Lead Coalition member and each of the Coalition Partners may agree upon a minimum number of sites assessed per member at the start of the cooperative agreement to ensure equitable distribution of funds across all members' jurisdictions.*

7. Upon designation of the specific sites, it will be the responsibility of the City of Grass Valley to work with the coalition member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of this member to obtain all required permits, easements, and/or access agreements as may be necessary to undertake assessments at the selected site. If this member does not have the capacity to perform these activities the City of Grass Valley may assist in securing necessary site access agreements and permits.

8. The Lead Coalition Member is responsible for ensuring that other activities as negotiated in the work plan, such as community outreach and involvement, are implemented in accordance with a schedule agreed upon by the City of Grass Valley and the coalition member in whose geographic area the site to be assessed is located.

Agreed:

 12/29/18

City of Grass Valley Lead Coalition Member/Date

 1/5/18

Nevada City Coalition Partner/Date

 1/5/18

Nevada County Coalition Partner/Date

Sean Powers
Community Development Agency Director

Amy Irani, REHS
Director of Environmental Health



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
ENVIRONMENTAL HEALTH DEPARTMENT**

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9853 www.mynevadacounty.com

November 29, 2016

Robert Richardson
City Manager
City of Grass Valley
125 E Main Street
Grass Valley, California 95945

RE: Gold Country Redevelopment Coalition Community Wide Assessment Grant Proposal

Dear Mr. Richardson,

This letter is to confirm the County of Nevada Environmental Health Department's (NCEHD) commitment to support the Brownfields program grant proposal "Gold Country Redevelopment Coalition Community Wide Assessment". NCEHD is committed to the health of the community and understands the unique environmental conditions of a legacy mining impacted community. NCEHD proactively supports projects that will positively impact the public health of the citizens and visitors to Nevada County.

The purpose of the project is to facilitate cleanup and revitalization of key brownfields within our communities in order to prevent community exposures to legacy toxics and to support our neighborhoods by allowing for planned development and safe recreation opportunities.

As a coalition member, we acknowledge that if the proposed project is awarded, each Coalition partner would need to sign a Memorandum of Agreement prior to the expenditure of any awarded assessment funds.

We look forward to working with our partners on this important planning project as well as the partnership with the other Coalition members. If you have any questions please contact Amy Irani, Director, NCDEH at (530) 265-1464 or David Huff, Program Manager, NCDEH, at (530) 265-1767.

Sincerely,

David Huff, REHS, CHMM
NCDEH Program Manager

ATTACHMENT A
City of Grass Valley
Brownfields Assessment Grant # 99T62701
Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields Assessment Cooperative Agreements 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 EPA approved workplan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2017 competition for Brownfields assessment cooperative agreements.
- b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the 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 CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE 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 cooperative agreements generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. However, the recipient must contact the EPA 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. EPA will provide guidance on Davis-Bacon Act compliance if necessary.

II. SITE ELIGIBILITY REQUIREMENTS

A. 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 workplan by 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, 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 their 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 workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents 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. Refer to EPA's FY17 Proposal Guidelines for Brownfields Assessment Grants, EPA-OLEM-OBLR-16-08 for discussion on this element.

- 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 II.A.2.a. above, the CAR must contact the EPA Project Officer and provide the necessary information 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 necessary information for EPA to make the determinations described in Section II.A.2.a. above.

III. 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. Alternatively, EPA may terminate this agreement under 2 CFR 200.339 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR 200.339 if EPA determines that insufficient progress was not the fault of the CAR. For purposes of assessment cooperative agreements, the CAR demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition cooperative agreements "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, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.
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. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

- a. Substantial involvement by EPA generally includes administrative activities by the Project Officer 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 Section I.B. If the CAR awards a subaward 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 does not allow the subrecipient to use EPA funds to assess a site for which the subrecipient is potentially liable under § 107 of CERCLA. (See Section III.C.3. for more information on subawards.)
 - 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 III.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 subrecipients remain responsible for incurring costs that are allowable under 2 CFR Part 200 Subpart E.

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 subrecipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subrecipients and contractors comply with the terms and conditions of this agreement.
3. Subawards are defined at 2 CFR 200.92. The CAR may not subaward 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 2 CFR Part

200.317 through 200.326. In addition, EPA policy encourages awarding subawards competitively and the CAR must consider awarding subawards through competition.

4. The CAR is responsible for ensuring that EPA's Brownfields assessment funding received under this cooperative agreement, or in combination with any other previously awarded Brownfields Assessment cooperative agreements does not exceed the \$200,000 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 cooperative agreement must include this amount in any total funding expended on the site.
6. **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. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, 200.328 *monitoring and reporting program performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

Quarterly progress reports must clearly differentiate which activities were completed with EPA funds provided under the Brownfield assessment cooperative agreement, versus any other funding source used to help accomplish project activities.

In addition, the report shall include brief information on each of the following areas: 1) a comparison of actual accomplishments to the anticipated outputs/outcomes specified in the cooperative agreement workplan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. The CAR agrees that it will notify EPA of

problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the cooperative agreement workplan.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. quarterly progress reports must include:
 - a. Summary and status of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of problems encountered or difficulties 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; including an explanation of any discrepancies from the approved workplan.
 - 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. The CAR should include an explanation of any discrepancies in the budget from the approved workplan.
3. If the CAR makes any subawards under this agreement, then it becomes a pass-through entity under the “Establishing and Managing Subaward” General Term and Condition of this agreement. As the pass-through entity, the CAR must report to EPA on its subaward monitoring activities under 2 CFR 200.331(d), including the following information on subawards as part of the CAR’s quarterly performance reporting:
 - a. Summaries of results of reviews of financial and programmatic reports.
 - b. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
 - c. Environmental results the subrecipient achieved.
 - d. Summaries of audit findings and related pass-through entity management decisions.
 - e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.
4. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess specific properties under this cooperative agreement.
5. In accordance with 2 CFR 200.328(d)(1), 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 workplan.

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 and submit the Property Profile Form instead.

F. Community Outreach

1. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed. Specifically:
 - a. The CAR agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
 - b. To increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.
 - c. Project Outreach Materials
 - i) If any document, fact sheet, and/or web material are developed as part of this cooperative agreement, then they shall include the following statement:
"Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA."
 - ii) If a sign is developed, as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at: <http://www.epa.gov/ogd/tc.htm>.

G. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, 200.328 *monitoring and reporting program performance*), the CAR agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement and at least one reproducible

copy suitable for printing. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas: 1) a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the assistance agreement workplan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. The CAR agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the cooperative agreement workplan.

H. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards 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 subaward to a subrecipient 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 subrecipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients. 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.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

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

1. To the extent allowable under the workplan, 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, 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 cooperative agreement funds 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 IV.B.; and
 - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subawards to the extent allowable under Section IV.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 as a programmatic cost for brownfield program development and implementation (including monitoring of health and institutional controls) as described in Task ___ of the EPA approved workplan. The CAR must maintain records on funds that will be used to carry out Task ___ of its EPA approved workplan to ensure compliance with this requirement.

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. Site 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 cooperative agreement;
 - 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 CAR of the cooperative agreement or subaward recipient 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 200 Subpart E.
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs 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, Cost Principles and Audit requirements for Federal Awards at 2 CFR 200 and 2 CFR 1500*. Direct costs for cooperative agreement administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the CAR is required to carry out the activity under the cooperative agreement. Costs incurred to report quarterly performance to EPA under the cooperative agreement are eligible.
- b. Ineligible cooperative agreement administration costs include direct costs for:
 - (1) Preparation of applications for brownfields grants;
 - (2) Record retention required under 2 CFR 1500.6;
 - (3) Record-keeping associated with equipment purchases required under 2 CFR 200.313;
 - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308;
 - (5) Maintaining and operating financial management systems required under 2 CFR 200.302;
 - (6) Preparing payment requests and handling payments under 2 CFR 200.305;
 - (7) Non-federal audits required under 2 CFR 200 Subpart F; and
 - (8) Close out under 2 CFR 200.343.
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 brownfields site for which EPA has not made a property-specific funding determination.

C. Interest-Bearing Accounts and Program Income

1. In accordance with 2 CFR 1500.7, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by 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 cooperative agreement 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 2 CFR 200.305(b)(7)(ii) relating 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 2 CFR 1500.8.

V. 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. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before

measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.

C. 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 all appropriate inquiries regulation. 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 (40 CFR 312). A suggested outline for an AAI final report is provided in "All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content", (Publication Number: EPA 560-F-14-003). This does not preclude the use of cooperative agreement 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 "All Appropriate Inquiries Final Rule: Reporting Requirements Checklist for Assessment Grant Recipients" (Publication Number: EPA 560-R-10-030) that EPA's Project Officer will provide to the recipient. The checklist also is available to CARs on EPA's website at www.epa.gov/brownfields.
 - 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 2 CFR 200.338 through 2 CFR 200.342. If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 2 CFR 200.342.

D. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved workplan. 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.

VII. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 2 CFR 200.305.

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 2 CFR 200.343. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.
2. The CAR, within 90 days after the end date of the period of performance or the termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement or 2 CFR Part 200.
 - a. The CAR must submit the following documentation:
 - (1) The Final Technical Cooperative Agreement Report as described in Section III.G. of these Terms and Conditions.

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

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bldg C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
<https://www.epa.gov/financial/grants>

- (3) A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.
- b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
 - c. The CAR must immediately refund to EPA any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other cooperative agreements.