

## **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/general\\_tc\\_applicable\\_aa\\_recipients\\_dec\\_26\\_2014.pdf](http://www.epa.gov/ogd/tc/general_tc_applicable_aa_recipients_dec_26_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 throughout the award.

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

The applicable terms and conditions below are in addition to the general terms and conditions noted above:

#### **1. FEDERAL FINANCIAL REPORT (FFR)**

Annual FFR (interim) pursuant to 2 CFR 200.327, EPA recipients shall submit an interim annual Federal Financial Report (FFR, SF-425) to EPA no later than 90 calendar days following the anniversary of the award date. The form is available on the internet at: <http://www2.epa.gov/financial/forms>.

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

At the end of the project, the recipient must submit a final FFR to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at: <http://www2.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email LVFC-grants@epa.gov or fax at 702-798-2423.

#### **2. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBE/WBE)**

##### **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.

##### **REPORTING PROVISION**

MBE/WBE reporting is required annually for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award **does not** meet the condition above and is not subject to the reporting requirements of the Disadvantaged Business Enterprise (DBE) Program. However, if during the performance of the award the total of all funds expended for direct procurement by the recipient and procurement under subawards or loans in the "Other" category exceeds \$150,000, annual reports will be required in accordance with the reporting paragraph below and you are required to notify your grant specialist for additional instructions.

The recipient also agrees to request prior approval from EPA for procurements that may activate DBE Program reporting requirements.

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 Good Faith Efforts requirements as described in 40 CFR Part 33 Subpart C and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

### **MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

When required, MBE/WBE reports must be submitted annually. 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. All procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final 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 30<sup>th</sup> of each year. Final reports are due by October 30<sup>th</sup> or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted 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**

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](http://www.epa.gov/osbp/dbe_reporting.htm)

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

This assistance agreement is a Technical Assistance Grant (TAG); or the award amount is \$250,000 or less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is \$250,000 or less. Therefore, the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate fair share objectives/goals for the utilization of MBE/WBEs in its procurements.

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

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to 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.

#### **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.

### **Programmatic Conditions**

#### **1. Cybersecurity Grant Condition for Other Recipients , Including Intertribal Consortia**

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

#### **2. Competency of Organizations Generating Environmental Measurement Data (Alternate 1)**

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 that if the total federal funding obligated on this award exceeds \$200,000 and will involve the use or generation of environmental data it will (unless it has otherwise done so) demonstrate competency prior to carrying out any activities involving the generation or use of environmental data under this agreement. Recipient shall then maintain competency for the remainder of the project period of this agreement and document this during the annual reporting process. A copy of the Policy is available online at [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm) or a copy may also be requested by contacting the EPA project officer for this award.

### 3. 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](http://www.fgdc.gov).

## Fiscal Year 2015 Brownfields Area-Wide Planning Program Cooperative Agreement Programmatic Terms and Conditions

### I. GENERAL FEDERAL REQUIREMENTS

#### A. Federal Policy and Guidance

1. In implementing this agreement, the cooperative agreement recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(6).
2. The CAR shall ensure that Brownfields Area-Wide Planning (BF AWP) activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.
3. The CAR may not use the BF AWP cooperative agreement funds to pay for any ineligible activities, as listed in these terms and conditions. Furthermore, the CAR is prohibited from using BF AWP cooperative agreement funds to pay for a response cost at a brownfields site for which the CAR is potentially liable under CERCLA §107. For requirements pertaining to any BF AWP activities that may be considered site-specific response actions under CERCLA, refer to the section on Site-Specific Work below.
4. Unless approved with the award of this cooperative agreement, the CAR must receive written EPA approval of a Final Workplan within 60 calendar days following the date of the award. The CAR must receive written EPA approval of the Workplan prior to expenditure of federal funds under this cooperative agreement. Unless the Agency Award official, or designee grants a waiver, no financial reimbursement may be made without an EPA approved Final Workplan. If the recipient fails to obtain EPA approval of the Final Workplan within 60 days of award, EPA may terminate this agreement under applicable Agency regulations.
5. 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; the National Historic Preservation Act; the Endangered Species Act; any 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.

## I. COOPERATIVE AGREEMENT REQUIREMENTS

### A. Term of the Agreement

1. The term of this agreement is two years from the date of award, unless an extension is approved by EPA, per the CAR's request.
2. If after 12 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a correction action plan that is approved by the EPA project officer (PO), or EPA may terminate this agreement. For purposes of the BF AWP cooperative agreements, the CAR demonstrates "sufficient progress" when the following have been met:
  - at least one community engagement activity that will help determine potential brownfields site reuse(s) is underway or completed,
  - at least one research activity (such as an economic/market or infrastructure analysis to inform brownfield site reuses) is underway or completed,
  - all key personnel are actively working on the project, and
  - at least 30% of funds have been obligated and drawn down for eligible activities as identified in the workplan.
3. ACRES reporting:

The CAR must use the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES), to associate to the BF AWP grant all relevant property records (such as site assessments and cleanups) that are already in ACRES.

  - Generally, the CAR will not create any new property records specifically for their BF AWP grant.
  - If the CAR is a current recipient of an EPA Brownfields assessment or cleanup grant for a property within the BF AWP project area, then the CAR must create property records in ACRES as required under their assessment or cleanup grant, and then associate the appropriate property record(s) to the BF AWP grant.
  - If the CAR is a past recipient of an EPA Brownfields assessment or cleanup grant for a property with the BF AWP project area, then the CAR must notify EPA of which property(ies) received the prior funding so that the appropriate property record(s) already in ACRES can be associated to the BF AWP grant.
  - If EPA provides a Targeted Brownfields Assessment within the BF AWP project area, the CAR will work with EPA to associate this TBA to the BF AWP grant.

The CAR must also track and report all leveraging information for the BF AWP project area. The CAR will ensure that any leveraging that is already otherwise associated to a particular property in ACRES is not double-counted (e.g., the same leveraging resource and amount should not be captured for both the BF AWP grant and the assessment or cleanup grant). The CAR must coordinate with their EPA PO to ensure the leveraging information is entered into ACRES.

The CAR must enter the data in ACRES no later than 30 days after the end of each reporting quarter. EPA provides ACRES training to CARs on a regular basis as detailed at [www.epa.gov/acres](http://www.epa.gov/acres).

1. The CAR shall properly document the completion of all BF AWP activities and milestones that are in the EPA approved work plan. Documenting completion must be done through the CAR's quarterly reporting and final report.

A. **Substantial Involvement**

1. The EPA will be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by EPA generally includes programmatic and administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts. Examples of substantial involvement may include:
    - close monitoring of the recipient's performance to verify results;
    - collaborating during performance of the scope of work;
    - review and approval of changes to the work plan and/or budget;
    - review and approval of BF AWP project workplan phases, including the brownfields area-wide plan, for consistency with the EPA- approved grant workplan and cooperative agreement terms and conditions (review and approval also includes EPA approval of brownfield site(s) eligibility and/or liability per CERCLA §101(39), as needed based on project activities being funded through the cooperative agreement);
    - regular project update conference calls with the recipient (monthly or more frequent project update calls suggested);
    - CAR and EPA participation in conference calls with other BF AWP grantees, technical assistance providers, and participation in regional or national meetings;
    - review of proposed procurements in accordance with 2 CFR Parts 200 and 1500, and approval of the substantive terms of contracts and subawards to ensure consistency with the scope of work (EPA will not select contractors or subawardees);
    - approving qualifications of key personnel (EPA will not select employees or contractors employed by the award recipient);
    - review and comment on quarterly reports prepared under the cooperative agreement, per the terms and conditions;
    - review and comment on financial and technical reports, monitoring all reporting, record-keeping, and other program requirements; and
    - providing brownfields property-specific funding determinations as needed.
    - At the Agency's discretion, the EPA may provide additional support outside of this grant to conduct brownfield assessments (such as targeted brownfields assessments) on eligible brownfield sites within the project area, or provide other relevant assistance to the project. If additional assistance is provided via EPA contract, the contractor team will be directed by and accountable to the EPA, but will provide technical assistance through consultation with the recipient. Any contract support provided by EPA will not duplicate or materially affect the project scope of work under the grant workplan. EPA may consider brownfield site eligibility and site liability prior to providing assistance.

Although EPA may review and comment on draft and final reports, the CAR will make the final decision on the content of the reports.

- b. Substantial involvement may also include facilitating the coordination and interaction between the CAR and other EPA programs or other federal agencies in the BF AWP project.
  - As appropriate, the EPA may facilitate initial coordination between BF AWP grant recipients and other federal agencies or EPA programs. Such coordination will serve to provide additional information to the CAR and support their efforts to develop a brownfields area-wide plan and implementation strategy.
  - Although the EPA may provide factual information regarding its BF AWP Program to potential funders, the Agency may not provide support letters to proposals, or applicants who seek assistance from other federal agencies, EPA programs, states, tribes, regional organizations, and local governments for additional planning or implementation resources. The Agency may not endorse proposals, applicants or recipients.
- b. EPA may waive any of the provisions in these substantial involvement terms and conditions, with the exception of providing brownfields property-specific funding determinations as needed. EPA will provide waivers of any substantial involvement terms and conditions in writing.
1. 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 BF AWP activities funded under this cooperative agreement comply with all applicable Federal and State laws.
  - c. The CAR and its subawardees remain responsible for incurring costs that are allowable under 2 CFR Parts 200 and 1500.

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

1. The CAR is responsible for ensuring that contractors and subaward recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subaward recipients and contractors comply with the terms and conditions of this agreement.
2. Subawards are defined at 2 CFR 200.92. The CAR may not make a 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 200.317 through 200.326. In addition, EPA policy encourages awarding subawards competitively, and the CAR should consider awarding subawards through competition.
1. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach, as outlined in the approved workplan. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, they shall

include the following statement: "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 the EPA."

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

To the extent identified in the approved work plan, cooperative agreement funds may be used for eligible programmatic expenses to support research/technical assistance and community involvement in BF AWP activities, and to perform BF AWP activities that inform the assessment, cleanup and reuse of brownfields such as those listed in Sections I.A. and I.B of the Request for Proposals, "FY2015 BROWNFIELDS AREA-WIDE PLANNING GRANT," EPA-OSWER-OBLR-14-06, July 2014 (available online at <http://www.epa.gov/oswer/docs/grants/epa-oswer-oblr-14-06.pdf> ).

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

1. Cooperative agreement funds shall not be used by the CAR or subrecipient for any of the following activities:
  - a. Conducting site assessments, site cleanups, response activities often associated with cleanups such as demolition or groundwater extraction, or brownfields area-wide plan implementation;
  - b. Marketing brownfields properties for redevelopment;
  - c. Any of the following if unrelated to identifying and advancing brownfields cleanup and reuse in the BF AWP project area: general community visioning, zoning updates, smart growth/sustainable development guidelines, design guidelines, area master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates. (Note: for these types of activities to be an eligible use of grant funds, there must be a clear nexus between the activity and how it will help further brownfields cleanup and reuse. This nexus must be clearly described in the grant workplan for the project);
  - d. Survey design, distribution or collection;
  - a. Business development planning, relocation planning for businesses;
  - b. Construction and land acquisition;
  - c. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Parts 200 and 1500;
  - d. Matching any other federal funds unless there is specific statutory authority for the match. CERCLA does not provide this authority;
  - e. Proposal preparation costs;
  - f. Projects or tasks that duplicate grants awarded under other EPA Brownfields grant programs described in CFDA Nos. 66.818, "Brownfields Assessment, Revolving Loan Funds, and Cleanup Grants" and 66.815, "Environmental Workforce Development and Job Training Grant" or other federally-funded environmental training, research, or technical assistance programs in their target community or communities. Projects may, however, complement community-wide activities EPA funds under CERCLA § 104(k)(2) assessment grants;
  - g. Projects related to exploring, testing and implementing smart growth policies and applications (if unrelated to brownfields), and projects the EPA funds under CFDA No. 66.611, "Environmental Policy and Innovation Grants" or through EPA Sustainable

Communities technical assistance under other announcements;

- h. Penalties or fines;
  - i. Federal cost-share requirement (for example, a cost share required by other federal funds);
  - j. A response cost at a brownfield site for which the recipient of the grant is potentially liable under CERCLA § 107; or
  - k. A cost of compliance with any federal law, excluding the cost of compliance with laws applicable to assessment or cleanup planning.
1. Additionally, under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under 2 CFR Parts 200 and 1500.
- 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*. Direct costs for grant 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 grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
  - a. Ineligible grant administration costs include direct costs for:
    - Preparation of applications for brownfields grants;
    - Record retention required under 2 CFR 1500.6;
    - Record-keeping associated with equipment purchases required under 2 CFR 200.313;
    - Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308 and 2 CFR 1500.8, as appropriate;
    - Maintaining and operating financial management systems required under 2 CFR 200.302;
    - Preparing payment requests and handling payments under 2 CFR 200.305;
    - Non-federal audits required under 2 CFR 200 Subpart F; and
    - Close out under 2 CFR 200.343.
  - b. The prohibition does not apply to direct costs for developing a brownfield site(s) area-wide plan and implementation strategy to inform site assessment, cleanup, and subsequent reuse. For example, costs for program management salaries (to the extent that such costs are included in the scope of work for the BF AWP grant), materials and supplies for public meetings, necessary travel and transportation expenses are programmatic, not administrative.

#### **A. Activities Considered "Site-Specific Work" under CERCLA Require EPA Pre - Approval**

1. In general, developing an area-wide plan and implementation strategy for the reuse of catalyst, high priority and other brownfield sites(s), is not considered site-specific work under CERCLA.

If the CAR intends to conduct any site-specific work at brownfield sites under this grant, they should be aware that this work is subject to the additional requirements or restrictions set

forth in this section.

Subject to prior approval by EPA, a CAR may conduct limited research or technical assistance activities for site-specific assessment or cleanup planning at one or more brownfields sites within the BF AWP project area. Such activities, if necessary for the project, should constitute a limited portion of the BF AWP project and budget. For example, site-specific assessment and cleanup planning activities that are necessary to help determine feasibility of site cleanup or reuse option(s) may be done if they support the recipient's decision-making and better inform the implementation strategies that are part of the brownfields area-wide plan.

For the purposes of the BF AWP grant, relevant site-specific work activities include brownfield site assessment planning and cleanup planning. Other site-specific work, including but not limited to Phase I or II site assessment and site cleanup, are not eligible activities under this cooperative agreement.

The CAR must contact their EPA grant project officer to initiate and complete the additional approval process required by EPA in order to determine whether the recipient will be able to conduct site-specific assessment or cleanup planning activities. This must be done prior to the CAR incurring any site-specific costs under this cooperative agreement. EPA approval for site-specific assessment or cleanup planning will be based on site eligibility and liability provisions under CERCLA (§ 101(39) and § 107). A recipient who is liable for contamination at a specific brownfields site is prohibited from conducting assessment or cleanup planning at that site using EPA grant funds under the BF AWP Program.

1. The following requirements will apply to all activities that may be considered site-specific work:
  - a. Site-specific planning for conducting a brownfields site assessment (e.g., Phase I or Phase II, etc.) or site-specific cleanup planning at a brownfields site requires EPA approval. A CAR who wishes to conduct research, or provide technical assistance for site-specific assessment or cleanup planning at one or more brownfields sites within the BF AWP project area must receive prior approval from the EPA for those activities. The information that must be provided to EPA includes whether or not the site meets the definition of a brownfield site as defined in CERCLA § 101(39)(A), whether the CAR is a potentially responsible party under CERCLA § 107, and/or defenses to liability.
  - b. Recipients must contact their EPA grant PO to initiate and complete the EPA approval process prior to conducting site-specific work. EPA approval for site-specific work will be based on the site eligibility provisions under CERCLA § 101(39), and the prohibition on use of funds under CERCLA § 104(k)(4)(B)(i)(IV). A CAR who is potentially liable for contamination at a specific brownfields site is prohibited from using EPA grant funds under the BF AWP program for response costs at the site.
  - a. Cooperative agreement funds may not be used to perform site-specific work at any of the following properties:
    - Facilities listed, or proposed for listing, on the National Priorities List (NPL);
    - Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
    - 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
    - A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

Note: If the site is excluded from the general definition of a brownfield in CERCLA § 101(39)(A), but is eligible for a property-specific funding determination under CERCLA § 101(39)(C), 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, including 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 site-specific work at brownfield sites that require a property-specific funding determination by EPA until the EPA PO has advised the recipient that the Agency has determined that the site is eligible.

- b. For any petroleum contaminated brownfield site at which the CAR anticipates engaging in site-specific work, the CAR shall contact the EPA PO and provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement.
- 1) This includes documenting that:
    - a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State;
    - the State determines there is “no viable responsible party” for the site;
    - 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
    - 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.
  - 2) Documentation must include
    - the identity of the State program official contacted;
    - the State official's telephone number;
    - the date of the contact; and
    - 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 CAR relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
  - 3) If the State chooses not to make the determinations described above, the CAR must contact the EPA PO and provide the information necessary for EPA to make the requisite determinations.
  - 4) EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA PO and provide the information necessary for EPA to make such determinations.
- a. The CAR cannot use cooperative agreement funds to pay for a response cost at a site for which the recipient is potentially liable under CERCLA § 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain ongoing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for any site-specific response

activity, as per under CERCLA § 104(k)(7)(C). In general, these continuing obligations include:

- 1) complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
- 1) taking reasonable steps with respect to hazardous substance releases;
- 2) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and
- 3) complying with information requests and administrative subpoenas and providing all legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

The CAR should refer directly to CERCLA for full description/specific requirements for each of the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r). The CAR should also refer to EPA's Common Elements Guidance at <http://www2.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund>.

#### A. 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 BF AWP grant, versus any other funding source used to help accomplish grant 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 work plan; 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 work plan.

1. Each quarterly report will also include information on the following:
  - summary of successes/challenges over the past quarter;
  - assistance needed from EPA;
  - narrative update on each workplan task, including:
    - o all community involvement activities held during the reporting period and those expected in the next reporting period;
    - o initiation or completion of key project deliverables and milestones, as identified in this workplan (e.g., existing conditions report, market study, infrastructure analysis, project mapping, etc); and

- o existing, planned or desired partnership and coordination activities with other entities (e.g., report on efforts to coordinate this project with community-based organizations, local, regional, state, tribal or federal agencies, foundations, etc., and briefly explain why these are relevant to this project).
- ACRES reporting information:
  - o leveraged funds or resources that help to accomplish the BF AWP project and those leveraged funds/resources that will help implement improvements in the BF AWP project area; and
  - o associated brownfields assessment or cleanup properties within the project area that have already have an ACRES ID

EPA encourages the CAR to also include in their quarterly report any unique project approaches the CAR wishes to highlight, photos of project area/community events, and upcoming opportunities for EPA to participate in local events.

2. Completed workplan deliverables must be submitted to the EPA Project Officer. Completion of workplan deliverables must be documented in quarterly reports.

## B. Final Technical Cooperative Agreement Report with Environmental Results

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 work plan; 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.

Example outline for Final Technical Report includes a summary of the following:

- Project Successes (1-2 paragraph narrative summary of overall project successes and/or site specific successes. Include photos or renderings)
- Project Challenges (1-2 paragraph narrative summary of overall project challenges and/or site specific challenges)
- Lessons Learned and Best Practices (e.g., new/unique/standard approaches that really made a difference for your project, materials/approaches developed that are transferable to other communities; opportunities for sharing information, etc.)
- Partnering and Leveraging: Identify significant partnering with other organizations, source and amount of leveraged resources, and any resources leveraged to continue the project after the expiration of the brownfields grant,
- Information reported in ACRES, including
  - o resources leveraged beyond the EPA grant during the project, including how they were used, and any resources leveraged to continue the project after the expiration of the brownfields grant, and
  - o associated brownfields assessment or cleanup properties within the BF AWP project area that have already have an ACRES ID
- Workplan Accomplishments: Provide a summary of accomplishments for each of the grant workplan tasks, and explain why any tasks were not completed (or not completed as anticipated). Include any supporting documents, deliverables or summaries not previously provided.
- Budget: Provide a budget table that compares total budgeted amounts and total amounts spent. Include an analysis and explanation of cost overruns or high unit costs. Identify whether any funds will be returned to EPA

## A. Final Brownfields Area-Wide Plan with Implementation Strategies and Next Steps

1. At the end of the cooperative agreement, the CAR must submit to EPA a final brownfields area-wide plan, complete with a thorough plan implementation strategy. An electronic file containing the brownfields area-wide plan and implementation strategy must be provided to EPA. A printed copy in addition to the electronic copy will also be accepted by EPA.
2. The final brownfields area-wide plan and implementation strategy will tie together the BF AWP activities and deliverables included in this workplan, and will describe the CAR's process.  
It must include at minimum:
  - priorities for brownfields site reuse as identified by the community and through an analysis of area and site existing conditions;
  - proposed brownfield site reuses for the catalyst, high priority brownfield sites identified in the workplan; and
  - what next steps/actions are needed near-term versus long-term. For example:
    - o what brownfields site assessment/cleanup will be needed (if known)
    - o what site improvements and other improvements to the area are needed
    - o who is going to lead each effort (partners involved or needed)
    - o amount and sources of funding/investment in area needed
2. If the CAR posts on-line the final brownfields area-wide plan and implementation strategies, the CAR must provide EPA with the appropriate weblink, in addition to the electronic file. EPA intends to publicly share the weblink by posting it alongside those of other BF AWP projects.

## I. ENVIRONMENTAL REQUIREMENTS

### A. Quality Assurance (QA) Requirements

If required by the EPA Regional quality assurance program, acceptable Quality Assurance Project Plan (QAPP) documentation must be submitted to the EPA Project Officer before the recipient can begin any activity that uses existing environmental data for brownfields area-wide plan and implementation strategy development. The grantee must consult with the EPA project officer to determine whether a QAPP will be required, based on the tasks and activities in the grantee's workplan. If required, a QAPP which meets the approval of EPA Region must be prepared by the grantee XX days before the start of the activities that will use environmental data. No work involving the compilation of data from literature, existing reports, studies or electronic media, or environmental modeling, shall be initiated under this project until the EPA Project Officer, in concert with the EPA regional quality assurance program, has determined whether a QAPP is necessary and if so, has approved the quality assurance documentation (see requirements at 2 CFR 1500.11). Additional information on these requirements can be found at the EPA Office of Grants and Debarment Web Site: <http://www.epa.gov/ogd/grants/assurance.htm>.

Generating environmental data is generally not anticipated under this cooperative agreement.

### B. Collection of Post Grant Information

Under the Government Performance and Results Act, the EPA reports on the many benefits of Brownfields funding. One such measure provides information on additional resources leveraged as a result of the use of brownfields grant funds. These leveraged, non-EPA funds may include additional funding from state, tribal, and local governments, or private organizations. As many of these activities occur beyond the grant period, the EPA may contact the CAR well after the project period ends to collect this information.

### **C. Climate Change Considerations**

As recipients develop the brownfields area-wide plan and implementation strategy, they must consider whether the proposed reuses for brownfield site(s) and other land in the project area are appropriate, given local changing climate conditions (e.g., sea level rise, site proximity to a flood plain, likelihood of increased major storm events, drought conditions, etc.). Recipients may additionally consider the degree to which the proposed reuses in the project area can be designed to reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, reduce stormwater run-off, improve air quality, and recycle and re-use materials generated during the cleanup and reuse process, to the maximum extent practicable.

To demonstrate compliance with this term and condition, the CAR is encouraged to use the *BF AWP GRANTEE CHECKLIST: How to Address Changing Climate Concerns in Your Brownfields Area-Wide Planning Project* found at [http://www.epa.gov/brownfields/pdfs/EPA\\_OBLR\\_2014\\_AWP\\_GranTEE\\_Checklist\\_Lay\\_out\\_v5.pdf](http://www.epa.gov/brownfields/pdfs/EPA_OBLR_2014_AWP_GranTEE_Checklist_Lay_out_v5.pdf).

### **I. PAYMENT AND CLOSEOUT**

#### **A. Payment Schedule**

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, as appropriate. 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 cooperative agreement, must submit all financial, performance, and other reports required as a condition of the grant.
3. At the end of the cooperative agreement, the CAR must refund to the Federal agency any balance of unobligated (unencumbered) cash advanced on the cooperative agreement.