

EXHIBIT A

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	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 02F40101 MODIFICATION NUMBER: 1 PROGRAM CODE: 4B	DATE OF AWARD 09/26/2024
		TYPE OF ACTION Augmentation: Increase	MAILING DATE 10/01/2024
		PAYMENT METHOD: ASAP	ACH# 66665
		RECIPIENT TYPE: Municipal	
RECIPIENT: City of Dallas 1500 MARILLA ST STE 4EN 4EN DALLAS, TX 75201-6318 EIN: 75-6000508		Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov	
PROJECT MANAGER Ngozi Nwosu 1500 Marilla, 7AN Dallas, TX 75201 Email: ngozi.nwosu@dallas.gov Phone: 214-794-2878		EPA PROJECT OFFICER Marsha Lay 1201 Elm Street, Suite 500, LCRBP Dallas, TX 75270-2102 Email: lay.marsha@epa.gov Phone: 214-665-7562	EPA GRANT SPECIALIST Jamell Ford Mission Support Division, MSDGG 1201 Elm Street, Suite 500 Dallas, TX 75270-2182 Email: ford.jamell@epa.gov Phone: 214-665-3182
PROJECT TITLE AND EXPLANATION OF CHANGES RLF Cooperative Agreement for City of Dallas This supplemental amendment is for an additional \$250,000, in Federal Funds, which brings the total to \$1,250,000, which constitutes fully funded.			
BUDGET PERIOD 11/01/2023 - 09/30/2029	PROJECT PERIOD 11/01/2023 - 09/30/2029	TOTAL BUDGET PERIOD COST \$ 1,250,000.00	TOTAL PROJECT PERIOD COST \$ 1,250,000.00
NOTICE OF AWARD Based on your Application dated 08/12/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 250,000.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 1,250,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 6, Grants Management Section 1201 Elm Street, Suite 500 Dallas, TX 75270-2102		ORGANIZATION / ADDRESS U.S. EPA, Region 6, Office of Brownfields and Land Revitalization R6 - Region 6 1201 Elm Street, Suite 500 Dallas, TX 75270-2102	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Marya Stanton - Director, Mission Support Division			DATE 09/26/2024

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 0
2. Fringe Benefits	\$ 0
3. Travel	\$ 9,000
4. Equipment	\$ 0
5. Supplies	\$ 1,000
6. Contractual	\$ 91,000
7. Construction	\$ 0
8. Other	\$ 1,149,000
9. Total Direct Charges	\$ 1,250,000
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 1,250,000
12. Total Approved Assistance Amount	\$ 1,250,000
13. Program Income	\$ 625,000
14. Total EPA Amount Awarded This Action	\$ 250,000
15. Total EPA Amount Awarded To Date	\$ 1,250,000

Administrative Conditions

National Administrative Terms and Conditions

General Terms and Conditions

The General Terms and Conditions of this agreement are updated in accordance with the link below. However, these updated conditions apply solely to the funds added with this amendment and any previously awarded funds not yet disbursed by the recipient as of the award date of this amendment. The General Terms and Conditions cited in the original award or prior funded amendments remain in effect for funds disbursed by the recipient prior to the award date of this amendment.

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2023-or-later>.

These terms and conditions are binding for disbursements and are in addition to or modify the assurances and certifications made as a 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: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov and *[Jamell Ford, Grant Specialist, ford.jamell@epa.gov, r6_epa_grants_programs@epa.gov]*
- MBE/WBE reports (EPA Form 5700-52A): *[Debora Bradford, DBE Coordinator, bradford.debora@epa.gov, Jamell Ford, Grant Specialist, ford.jamell@epa.gov, r6_epa_grants_programs@epa.gov]*
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: *[Jamell Ford, Grant Specialist, ford.jamell@epa.gov, Marsha Lay, Project Officer, lay.marsha@epa.gov, r6_epa_grants_programs@epa.gov]*
- Payment requests (if applicable): *[Jamell Ford, Grant Specialist, ford.jamell@epa.gov, Marsha Lay, Project Officer, lay.marsha@epa.gov, r6_epa_grants_programs@epa.gov]*
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: *[Marsha Lay, Project Officer, lay.marsha@epa.gov, r6_epa_grants_programs@epa.gov]*

Programmatic Conditions

FY24 Brownfields Revolving Loan Fund (RLF) Cooperative Agreement Infrastructure Investment and Jobs Act Funds (IIJA) Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization cooperative agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k) and the Infrastructure Investment and Jobs Act (IIJA), as well as, agreements that transitioned to § 104(k), or agreements which have been amended after 12/24/14.

I. GENERAL FEDERAL REQUIREMENTS

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans made by RLF recipients are *Subawards* as that term is defined at 2 CFR § 200.1. The term subaward also encompasses “grants” made by the RLF recipient under CERCLA § 104(k)(3) (B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of grants are different. For clarity, these T&Cs refer to “loans” to describe subawards that generate program income from repayments of principal, interest charges and loan processing fees paid by “borrowers.” The T&Cs refer to “subgrants” to describe subawards the RLF recipient provides to an eligible entity or nonprofit organization (“subgrantees”) under terms that do not require repayment.

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR). These T&Cs are effective for activities occurring after the date of amendment of this cooperative agreement.

2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to have borrowers or subgrantees conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.

If the State or Tribe does not have a promulgated response program that is applicable to the planned brownfield activity, then the CAR is required to consult with the EPA Project Officer to ensure the protectiveness of human health and the environment.

4. A term and condition or other legally binding provision shall be included in all loan and subgrant agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), applicable federal laws and requirements include 2 CFR Part 200.

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; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); 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 § 3145); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.

6. 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 by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon, please see the [Contract Provisions for Davis-Bacon and Related Acts](#) and the Brownfields Davis-Bacon terms and conditions.

7. For funding added after May 14, 2022, refer to the General Term & Conditions for Buy America Sourcing requirements under the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA; also known as Bipartisan Infrastructure Law or BIL) (P.L. 117-58, §§70911-70917). An adjustment period waiver may apply to funding awarded between May 14, 2022 and February 28, 2023. The CAR can also refer to EPA's [Frequently Asked Questions for BABA](#) for more information.

8. The recipient agrees to have financial management and programmatic management systems in place to:

a. Track and report on expenditures of IIJA funds.

b. Track and report outputs and outcomes achieved with IIJA funds.

9. RLF supplemental funding is generally awarded on an annual basis to high-performing CARs who meet specific criteria. The CAR can find additional information on the timing and procedures for supplemental funding requests on the EPA Brownfields Program website (<https://www.epa.gov/brownfields/brownfields-revolving-loan-fund-rlf-grants>).

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

All brownfield sites that will be addressed using RLF funds must be located within the geographic boundary described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan).

A. Brownfield Site Eligibility

1. Prior to performing site work, the CAR must provide information to the EPA Project Officer about each site that will be addressed under this cooperative agreement. The CAR may use cooperative agreement funds to prepare information that is provided to the EPA Project Officer. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, or has defenses to CERCLA liability.

2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.

3. Brownfield Sites Contaminated with Petroleum

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:

- i. the State determines there is "no viable responsible party" for the site;
- ii. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
- iii. 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 state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

- i. the identity of the State program official contacted;
- ii. the State official's telephone number;
- iii. the date of the contact; and
- iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing, investigating, or cleaning up 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.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. §

1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations.

B. Borrower and Subgrantee Eligibility

1. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.
2. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantees include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that do not engage in lobbying activities with the federal government as defined in Section 3 of the Lobbying Disclosure Act of 1995 are eligible for loans and subgrants. Nonprofit organizations with 501(c)(4) tax exemption status that lobby the federal government are not eligible for loans and subgrants.
3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant. The subgrantee must consult with the CAR, who in turn must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site during the period of performance of the subgrant. Once the subgrant ends, the statutory ownership requirement is extinguished. For the purposes of this agreement, the term “owns” means fee simple title unless the EPA Project Officer approves a different ownership arrangement.
4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.
5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 50%, provided that the total amount of the principal forgiven for that loan shall not exceed \$500,000 of the CAR's total award amount (EPA funds + cost share, if applicable – see Section IV.A.1. and IV.B.3.). Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site. The discounted amount in a discounted loan shall apply towards non-loan costs in the 50/50 split rule described in [Section IV.B.4.](#) (i.e., the discounted amount cannot apply towards the 50% of EPA funds + cost share, if applicable – see Section IV.A.1., that must be spent on loans and associated eligible programmatic expenses). The CAR may request a waiver of the discounted amount, discounted percentage, or the minimum 50/50 split by consulting with the EPA Project Officer for information about the waiver process. In general, a loan may not be discounted after it has already been executed. Any post-execution discounting has to be approved by the EPA Project Officer.
6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. In addition, the borrower or subgrantee may not be affiliated with a potentially liable person as described in CERCLA §§ 101(40)(H)

and 107(q)(1)(A)(ii). The CAR may rely on its own investigation which can include an opinion from the borrower's or subgrantee's counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.

7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.

8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.

9. A borrower or subgrantee must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.

10. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

1. CARs, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a loan or subgrant must provide information indicating that cooperative agreement funds will not be used to pay for a response cost at a site for which the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107. The CAR, borrower, or subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR, borrower, or subgrantee to maintain its eligible status. If the CAR, borrower, or subgrantee fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

a. Performing "all appropriate inquiries" into the previous ownership and uses of the property before acquiring the property.

b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationship, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR, borrower, or subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

c. Demonstrating that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).

- d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.
- e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.
- f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.
- g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).
- h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR's, borrower's, and subgrantee's continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain 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).

CARs, borrowers, and subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions.

The EPA Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 2 years from the date of award and on an annual basis thereafter. If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Grants Management Officer or Award Official. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances. Sufficient progress at 2 years and annually thereafter is indicated by the CAR having made a loan(s) and/or grant (s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, the development of one or more potential loans/subgrants, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

2. Partial termination can occur if a CAR fails to complete the initial round of lending in the time schedule

provided in the cooperative agreement. In this situation, as provided at 2 CFR §§ 200.340(a)(1) and (5) or 2 CFR § 200.340(a)(3), as appropriate, the agreement may be partially terminated and the following actions may occur:

- a. Unused cooperative agreement funds will be deobligated by EPA;
- b. The cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement;
- c. EPA may determine whether sufficient funds remain to permit effective RLF operation; or
- d. EPA may terminate the agreement and recover the federal share of its assets if it determines that the purpose of the cooperative agreement cannot be met.

B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.
- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
- d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to clean up a site for which the subrecipient is potentially liable under CERCLA § 107.)
- e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.
- f. Monitoring the use of program income after the cooperative agreement project period ends.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- g. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
 - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.

ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.

iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)

iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.

h. Reviewing and approving that the Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, meets the Brownfields Program's requirements for an ABCA.

i. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards (i.e., both subgrants and loans) as appropriate and discussing compliance with 50/50 split rule. If applicable, the EPA Project Officer may review the substantive terms of intra-governmental loans. The EPA Project Officer may review requests for proposals, invitations for bid, scopes of work and/or plans and specifications for contracts over \$250,000 prior to advertising for bids.

j. Reviewing the qualifications of key personnel. (EPA does not have the authority to select employees or contractors, including consultants, employed by the CAR or subrecipients receiving pass-through awards.)

k. Reviewing information in performance reports to ensure all costs incurred by the CAR, borrower, subgrantee, and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – f. in Section III.B.1. in writing.

2. Effects of EPA's substantial involvement include:

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 cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.

c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. All additional sites selected for eligible activities throughout the period of performance (i.e., sites that were not identified in the workplan) must be located within the geographic boundary(ies) identified by the CAR in the workplan.

If the CAR has another open RLF cooperative agreement that was funded by IIJA and awarded in FY23 or later, consistent with the FY23 or later RLF Grant Guidelines and FY23 or later RLF Supplemental Funding Instructions, criteria for selecting additional sites must at least consider whether the site is located within an underserved community^[1] or disadvantaged census tract, as identified through the Climate and Economic Justice Screening Tool (CEJST) in addition to considering the prioritization criteria identified in the FY23 or later application, FY23 or later RLF Supplemental Funding request, the workplan, or developed during implementation of the workplan. Note, subgrant criteria developed during the implementation of the workplan must lead to the CAR addressing sites in areas with similar characteristics as the areas discussed in the FY23 or later application or FY23 or later Supplemental Funding request.

2. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. This requirement also applies to procurement processes that were completed before the award of this cooperative agreement. See the [Brownfields Grants: Guidance on Competitively Procuring a Contractor](#) for additional information.

CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to provide oversight on site cleanup activities vs. community engagement) and to allow the ability for work be performed concurrently at multiple sites within the defined and approved geographic boundary.

3. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.

4. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff, to provide technical assistance, advice, and expertise to the CAR while the borrower or subgrantee and their cleanup contractor direct the cleanup at a given site.

5. The CAR shall act as or appoint a qualified “fund manager” to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager must be consistent with 2 CFR Parts 200 and 1500 and [EPA's Subaward Policy](#). Additional information is available in EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

6. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer waives this requirement.

7. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.

8. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of [2 CFR §§ 200.331 through 200.332](#). Requirements for oversight and management of subgrantees are supplemented in EPA's National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.

9. The following requirements apply when a pass-through entity (CAR) makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA's National Term and Condition for Subawards.

a. Pass-through entities must establish and follow a system that ensures all loan agreements are in writing and contain all of the elements required by [2 CFR § 200.332\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.332(a)(4). EPA has developed an optional template for subaward agreements that is available in [Appendix D of EPA's Subaward Policy](#) which may also be used for loan agreements.

b. Borrowers must comply with the internal control requirements specified at [2 CFR § 200.303](#) and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity (CAR) must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.

c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a "unique entity identifier." This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR § 200.332\(a\)\(1\)](#), but based on [2 CFR § 25.300](#), borrowers and subgrantees do not have to register in SAM. The unique entity identifier (UEI) is generated when an entity registers in SAM. Information on registering in SAM and obtaining a UEI is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "*System for Award Management and Universal Identifier Requirements*."

d. The pass-through entity (CAR) must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with [2 CFR Part 170, Reporting Subaward and Executive Compensation](#) under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "*Reporting Subawards and Executive Compensation*."

e. In addition to other prudent lending practices described, in [Section VI](#), below, pass-through entities (CARs) must comply with EPA's General T&Cs (Establishing and Managing Subawards).

10. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under [2 CFR § 200.332\(d\)](#), including the following information 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 borrower or subgrantee performance;

c. Environmental results the borrower or subgrantee achieved;

d. Summaries of audit findings and related pass-through entity management decisions, if any; and

e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.332\(e\)](#), [2 CFR § 200.208](#), [Specific conditions](#), and the [2 CFR § 200.339](#), [Remedies for Noncompliance](#).

11. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

a. 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 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.

b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above 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 § 200.332(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.

12. 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.

D. Quarterly Performance Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly performance reports to the EPA Project Officer within 30 days after each reporting period. Initially, quarterly performance reports will be submitted via email or via the optional Quarterly Reporting function tool within the Assessment, Cleanup and Redevelopment Exchange System (ACRES). However, once EPA has developed and incorporated the updated Quarterly Performance Reporting tool into ACRES, the CAR agrees to use this tool to input quarterly performance reports directly into ACRES within 30 days after each reporting period (the EPA Project Officer will notify the CAR when use of this tool in ACRES is required). The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter). If a due date falls on a weekend or holiday, the

report will be due on the next business day.

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 from the EPA-approved workplan and budget shall be included in the report. The report shall also include any changes of key personnel concerned with the project that were approved by the EPA Grants Management Officer or Award Official. (Note, as provided at 2 CFR § 200.308, *Revision of budget and program*, the CAR must seek prior approval from the EPA Grants Management Officer or Award Official for a change in a key person.)

2. The CAR must submit performance reports on a quarterly basis in ACRES using the Revolving Loan Fund Quarterly Report function or to the EPA Project Officer. Quarterly performance reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, including the required cost share, if applicable – see Section IV. A.1., and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
- c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
- d. An update on the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- e. A list of the loans and/or subgrants during the reporting quarter.
- f. The amount of the cooperative agreement's total award amount (EPA funds + cost share, if applicable – see Section IV.A.1.) that has been committed thus far on loan costs and non-loan costs, respectively, and whether the cooperative agreement is expected to meet the 50/50 split by the end of the cooperative agreement project period for the cooperative agreement's current total award amount.
- g. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); cost share contributions, if applicable – see Section IV.A.1.; program income generated and used (e.g., program income received and disbursed during the reporting quarter and during the entire cooperative agreement, and the amount of program income remaining); and total remaining funds. The budget summary table must include costs that are charged to the “other” budget object class category (e.g., subawards, etc.).

The CAR shall include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. Program income accounting records must differentiate program income generated from interest and fees, versus program income

generated from principal repayments. The CAR shall include a statement on funding transfers^[2] among direct budget categories or programs, functions and activities that occurred during the quarter and cumulatively during the period of performance.

Note: ACRES reporting requirements can change over time, based on expansion of EPA's information collection authority, and the CAR is responsible for complying with the latest ACRES reporting requirements at the time of each quarterly performance report. The EPA Project Officer will notify the CAR when ACRES reporting requirements, specific to Brownfields RLF, change.

h. For local governments that are using RLF funding for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly performance report (see [Section III.E.](#) below).

3. For the loans executed by the CAR under this agreement, the CAR must also report on the following items as part of the CAR's quarterly performance reporting:

a. Summaries of results of reviews of borrower financial and programmatic reports.

b. Environmental results achieved by the borrower.

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds direct EPA funding, cost share, if applicable – see Section IV.A.1., and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1), the CAR agrees to inform the EPA Project Officer as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

E. ACRES Data Submission

1. Property Profile Form: The CAR must report on interim progress (e.g., loan signed, clean up started) and any final accomplishments (e.g., clean up completed, contaminants removed, institutional controls required, engineering controls required) by completing and submitting relevant portions of the electronic Property Profile Form using the 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. The CAR must enter any new data into ACRES prior to submitting the quarterly performance report to the EPA Project Officer. The CAR must utilize the electronic version of the Property Profile Form in ACRES unless approval is obtained from the EPA Project Officer to use the hardcopy version of the Property Profile Form or its use is included in the approved workplan.

2. Brownfields RLF Form: Additionally, the CAR must also report program income details quarterly on the Brownfields RLF Form, which is located on the CAR's RLF cooperative agreement homepage in ACRES.

F. Final Cooperative Agreement Performance Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329 *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final performance report on the cooperative agreement via email, unless the EPA Project Officer agrees to accept a paper copy of the report. The final performance report shall document and summarize the elements listed in Section III.D.2., as appropriate, for activities that occurred over the entire project period. In addition, when applicable, the CAR must include required documentation associated with an EPA-approved waiver for not meeting the minimum 50/50 split by the end of the cooperative agreement's project period.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. As provided in IIJA, no cost share is required for this agreement. However, the CAR may have an open non-IIJA funded RLF cooperative agreement where cost share is required as part of its overall RLF program. Therefore, any references to cost share in these Terms and Conditions are related to the overall RLF program (i.e., cost share associated with a non-IIJA funded RLF cooperative agreement).

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantee

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in [Section V.](#) of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
- b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
- d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
- e. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.
- f. Performing limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
- g. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan which will include reasonable notice, opportunity for public involvement and comment

on the proposed cleanup, and response to comments.

h. Establishing an Administrative Record for each site.

i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.

j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. [The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under [Section IV.](#), *Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees.*]

k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.

l. Borrower and subgrantee progress reporting to the CAR.

2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.

3. Each site being remediated via an RLF subgrant is limited to a total of \$500,000 of the CAR's total award amount (i.e., funds EPA awards directly to the CAR for all open RLF grants and any associated cost share, if applicable – see Section IV.A.1.). The term “CAR's total award amount” is used to represent the EPA funds + cost share (if applicable – see Section IV.A.1.) from all of the CAR's open RLF grants (i.e., the term considers the RLF program as a single, unified program rather than separate open RLF cooperative agreements; it does not include any funding from cooperative agreements that the CAR has already closed out). The total award amount also never includes program income earned while the cooperative agreement is open or retained and post-closeout program income. For the purposes of determining compliance with the subgrant cap, the value of any technical assistance the CAR provides to the subgrantee (e.g., an ABCA paid for with EPA funds or cost share, if applicable – see Section IV.A.1.) would not be included in the subgrant and does not count towards the \$500,000 per site cap. However, any expenses charged to the subgrant by the subgrantee (e.g., including the cost of an ABCA) would count towards the \$500,000 subgrant cap. Private, for-profit entities are not eligible for subgrants.

4. At least 50% of each open cooperative agreement's total award amount (i.e., EPA funds + cost share, if applicable – see Section IV.A.1.) must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs by the end of the cooperative agreement project period. The remaining EPA funding and cost share, if applicable – see Section IV.A.1, may be used for all other eligible programmatic costs that are not associated with loans, such as subgrants, forgiven principal in discounted loans, and eligible programmatic costs to manage/market the RLF. This is referred to as the 50/50 split rule, which addresses the minimum ratio of loan costs to non-loan costs required for the cooperative agreement's total award amount by the end of the cooperative agreement project period. CARs are not required to meet the 50/50 split rule “proportionally” when drawing down funds, but the EPA Project Officer will monitor to confirm the CAR is on track to meet the minimum 50/50 split by the end of the cooperative agreement.

The CAR may request a waiver of the \$500,000 subgrant limit or the minimum 50/50 split by seeking a waiver through the EPA Project Officer who can provide information on the waiver process. However, a waiver is not required for either requirement when only program income is used, since subgrants that are funded with 100% program income are not limited in amount and do not contribute to this 50% limitation. A waiver is also not required for the discounted amount of a loan if the loan is funded with 100% program income. Furthermore, if program income and/or post-closeout program income are combined with EPA funds and/or cost share (if applicable – see Section IV.A.1.) the program income and post-closeout program income must not be included in the total subgrant or loan amount for the purposes of determining compliance with the subgrant cap, discounted loan limits, or 50/50 split rule.

If the CAR has more than one open RLF cooperative agreement and would like to close out the older cooperative agreement more quickly, the CAR has the option of:

a. Submitting a waiver request to the EPA Project Officer requesting to apply the 50/50 split rule to the CAR's RLF program as a whole for all open RLF cooperative agreements, rather than to each open RLF cooperative agreement individually, on one condition: if one of those open RLF grants closes out (i.e., project period ends) and that closing cooperative agreement does not meet the 50/50 split requirement on its own due to excessive non-loan costs, the CAR must continue to include that cooperative agreement in the 50/50 split calculation for the other open cooperative agreement going forward. This allows the 50/50 split rule to be honored for the entire open RLF program.

b. Requesting that the EPA Project Officer and Grants Management Officer allow shifting of programmatic costs (loan and non-loan costs) between the two open cooperative agreements, in accordance with 2 CFR § 200.405(c), to better achieve the CAR's RLF program priorities. Once the oldest cooperative agreement closes out, the workplan and budget for the remaining open cooperative agreement would need to be amended to include programmatic costs.

5. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(C):

- a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
- b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
- c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
- d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

6. Local Governments Only. If authorized in the EPA-approved workplan and budget narrative, up to 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 of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted, and the assessment indicates that the sites are

contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

7. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

8. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the direct EPA funding plus the CAR's cost share, if applicable – see Section IV.A.1., for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is **\$62,500**. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement, or used to meet the recipient's cost share, if applicable – see Section IV.A.1., shall not exceed this amount. Note that additional administrative costs may be allowed when using program income received under this cooperative agreement during the period of performance (see Section IV.D.2.). Subgrantees and borrowers may use up to 5% of the amount of Federal funds (direct EPA funding, cost share – if applicable – see Section IV.A.1, and program income) in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. [Note: Borrowers may charge direct administrative costs to their loan, but borrowers cannot charge indirect costs.]

The term “administrative costs” does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. Design and performance of a response action; or
- c. Monitoring of a natural resource.

Eligible cooperative agreement and subgrant administrative costs subject to the 5% limitation include direct costs for:

a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.

- i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
- ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
- iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
- iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
- v. Financial reporting under 2 CFR § 200.328;

vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and

vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

c. Borrowers may use up to 5% of the amount of the Federal funds in the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs for:

- i. Salaries, benefits, and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel), but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;
- ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
- iii. Supplies and equipment not used directly for cleanup at the site.

d. Eligible direct costs for loan administration include expenses for:

- i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
- ii. Maintaining and operating financial management and personnel systems;
- iii. Preparing payment requests and handling payments; and
- iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.

e. Borrowers shall not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantee

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:

- a. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
- c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing

of property (activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);

d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant;

e. To pay for a penalty or fine;

f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;

g. To pay for a response cost at a brownfield site for which the CAR or recipient of the subgrant or loan is potentially liable under CERCLA § 107;

h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and

i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

c. Facilities that are subject to the jurisdiction, custody, or control of the United States government except for land held in trust by the United States government for an Indian Tribe; or

d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

D. Use of Program Income – During the Performance Period

1. Program income for the RLF 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 shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.8, 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 unless otherwise specified (e.g., [Section IV.B.4](#) regarding the minimum 50/50 split). Accordingly, program income may be used for administrative costs, including any applicable indirect costs, provided that the total amount of funds used for administrative costs does not exceed 5% of the sum of direct EPA funding plus the cost

share, if applicable – see Section IV.A.1., and program income the CAR generates. CARs that intend to use program income for cost share for any other Brownfield Grants under 2 CFR § 200.307(c)(3) must obtain prior approval from the EPA Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share for any other Brownfield Grants. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.

3. In accordance with 2 CFR § 1500.8(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.

4. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with OMB cost principles at 2 CFR Part 200, Subpart E when charging costs against program income. For any cost determined by EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refund the amount to EPA as directed by the EPA Action Official in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.

5. Loans or subgrants made with a combination of program income, post-closeout program income, cost share, if applicable – see Section IV.A.1., and/or direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA and/or cost share, if applicable – see Section IV.A.1., in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.

6. The CAR must obtain the EPA Project Officer approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

E. Interest-Bearing Accounts

1. The CAR must deposit advances of cooperative agreement funds (as described in [Section VII.A., Methods of Disbursement](#)) and program income (as defined earlier) in an interest-bearing account unique to this cooperative agreement [i.e., separate from funds for another open RLF cooperative agreement, and separate from post-closeout program income governed under a Closeout Agreement (COA) since separate reporting of funds is required under a COA]. Consistent with 2 CFR 200.305(d)(7) as well as the unique accounting requirements for states under 2 CFR 200.302(a) and 200.305(a), the CAR does not have to establish entirely separate bank accounts for EPA funds. The CAR does, however, have to be able to account for EPA funds (including cost share, if applicable – see Section IV.A.1., and program income) received, obligated, and expended, and Federal funds must be deposited and maintained in insured accounts whenever possible as required by the regulation. Subaccounts are allowed, as long as the interest earned and all funds for each of the CAR's open and post-closeout RLF grants can be accounted for accurately by the CAR.

2. Advances of EPA funds (and other Federal funds as well) must also be placed in interest bearing accounts as provided in 2 CFR § 200.305(b)(8) for CARs other than states which are subject to applicable Treasury regulations. Advances of EPA funds must be maintained in an account that is separate from the post-closeout program income in the RLF. While interest earned by CARs on

advances of EPA funds should be minimal given the regulatory and T&C requirements for prompt disbursement of drawn down funds, any interest the CAR does earn on advanced Federal funds is subject to 2 CFR § 200.305(b)(9). This regulation generally requires that interest on advanced Federal funds in excess of \$500 must be transmitted annually to the U.S. Department of Health and Human Services.

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

F. Closeout Agreement and Use of Post Cooperative Agreement (i.e., Post-Closeout) Program Income

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.8(c) after the end of the period of performance of the cooperative agreement, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the cooperative agreement period of performance (post-closeout program income) in accordance with terms of a COA. At the end of the cooperative agreement period of performance, the CAR shall comply with the attached COA. The COA goes into effect for this assistance agreement number the day after the cooperative agreement period of performance ends unless otherwise designated by the EPA Grants Management Officer or Award Official. The period of performance is identified as the project period in the Notice of Award.

2. This COA is based on the FY22 RLF COA template. EPA plans to modify RLF COA templates every five years. EPA reserves the right to renegotiate the terms of this RLF COA every five years, in conjunction with the template change (e.g., next change will be in FY27). If the CAR agrees to continue to operate the RLF under a COA past FY27, the CAR shall work with the EPA Project Officer to update to the latest COA template. Otherwise, the Project Officer and CAR will negotiate a mutually acceptable disposition of unused program income, and an Authorized EPA Official (e.g., Grants Management Officer or Award Official) will modify the COA accordingly.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR, or borrower/subgrantee with CAR concurrence, shall prepare an ABCA, or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events and changing climate conditions (e.g., sea level rise, drought, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis and documented in a decision document upon completion of the public comment period. The CAR, or borrower/subgrantee with CAR concurrence, must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

Authority: Quality Assurance applies to all assistance agreements involving environmental information as defined in [2 C.F.R. § 1500.12](#) Quality Assurance.

When environmental data are collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

The recipient shall ensure that subawards involving environmental information issued under this agreement include appropriate quality requirements for the work. The recipient shall ensure sub-award recipients develop and implement the Quality Assurance (QA) planning documents in accordance with this term and condition; and/or ensure sub-award recipients implement all applicable approved QA planning documents.

1. Quality Management Plan (QMP)

a. Prior to beginning environmental information operations, the recipient must:

i. Develop a QMP,

ii. Prepare the QMP in accordance with the current version of EPA's [Quality Management Plan \(QMP\) Standard](#). Submit the document for EPA review, and

iii. Obtain EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.

b. The recipient must review their approved QMP at least annually. These documented reviews shall be made available to the sponsoring EPA organization if requested. When necessary, the recipient shall revise its QMP to incorporate minor changes and notify the EPA Project Officer and QAM of the changes. If significant changes have been made to the Quality Program that affect the performance of environmental information operations, it may be necessary to re-submit the entire QMP for re-approval. In general, a copy of any QMP revision(s) made during the year should be submitted to the EPA Project Officer and QAM in writing when such changes occur. Conditions requiring the revision and resubmittal of an approved QMP can be found in section 6 of EPA's [Quality Management Plan \(QMP\) Standard](#).

2. Quality Assurance Project Plan (QAPP)

a. Prior to beginning environmental information operations, the recipient must:

i. Develop a QAPP (The QAPP is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the

design, construction, and operation of environmental technology.),

ii. Prepare QAPP in accordance with the current version of EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#),

iii. Submit the document for EPA review, and

iv. Obtain EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.

b. The recipient shall notify the EPA Project Officer and the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) when substantive changes are needed to the QAPP. EPA may require the QAPP be updated and re-submitted for approval.

c. The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the EPA Project Officer and the QAM at least annually and may also be submitted when changes occur.

For Reference:

- [Quality Management Plan \(QMP\) Standard and EPA's Quality Assurance Project Plan \(QAPP\) Standard](#); contain quality specifications for EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [EPA QA/G-5: Guidance for Quality Assurance Project Plans](#).
- (QAM and/or PO may insert QA references that inform or assist the recipient here).
- [EPA's Quality Program](#) website has a [list of QA managers](#), and [Specifications for EPA and Non-EPA Organizations](#).
- The Office of Grants and Debarment [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).

3. 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 <https://www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-assistance-agreements> or a copy may also be requested by contacting the EPA Project Officer for this award.

C. Public Involvement and Community Outreach

1. All RLF loan and subgrant cleanup activities require a site-specific Community Involvement Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the

proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.

D. Public Awareness

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.

a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.

b. If the EPA logo is displayed along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the City of Dallas received financial support from the EPA under an Assistance Agreement per the term and condition described in Section V.D.1.a. above. More information is available at <https://www.epa.gov/stylebook/using-epa-seal-and-logo>.

c. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law." The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at <https://www.epa.gov/invest/investing-america-signage>.

d. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

3. 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 and/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.

4. To increase public awareness of projects serving communities where English is not the predominant language, CARs 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.

5. All public awareness activities conducted with EPA funding are subject to the provisions in the General

Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

E. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; the cleanup plan (or the contractor solicitation if it includes the cleanup plan); cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination contained in the CAR's COA.

F. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the state or tribal regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2.. If the borrower or subgrantee is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

G. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. 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 cleanups are complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet longterm brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements sufficient to recover, as a minimum, the principal amount of the loan less any repayment discounts; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions. Intra-governmental loans may be made consistent with EPA's guidance with the approval of the EPA Project Officer. Governmental recipients may not make intra-governmental subgrants. Nonprofit recipients may not make intra-entity loans and subgrants without EPA Project Officer approval of a waiver.

2. The CAR shall not incur costs under this cooperative agreement for loans subgrants or other eligible

costs until an RLF cooperative agreement workplan has been submitted to and approved by the EPA Project Officer or program manager. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

- a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.
- b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
- c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.
- d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
- e. Requiring that borrowers or subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
- f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
- g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

B. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents

1. All loans and subgrants must include the information required by 2 CFR § 200.332(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's [Subaward Policy](#) internet page. EPA does not require CARs to use the template.
2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:
 - a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See [Section I. A.2.](#) and [Section II.](#))
 - b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.

c. Borrowers or subgrantees shall document how funds are used.

d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at [2 CFR § 200.334](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records, so that the CAR can maintain the records, if necessary, for complying with the CAR's obligations under [2 CFR § 200.334](#). CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in the attached COA, records related to the COA must be retained by the CAR for the duration of the COA and retained for a period of three (3) years following termination or discontinuation of the COA.

e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental noncompliance at the site subject to the loan or subgrant.

f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may consult with EPA for assistance with this matter.

g. Borrowers or subgrantees shall conduct cleanup activities as required by the CAR.

h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.327, as applicable.

i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.

j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Parts 200 and 1500.

k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the [Grants internet site](#) at www.epa.gov/grants. Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for:

- a. documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and
- b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. 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 grant or subaward to a subaward recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- a. The affected party,
- b. Any member of his immediate family,
- c. His or her partner, or
- d. 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.

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is

EPA's transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into an agreement with a borrower or a subgrantee; “disbursement” is the transfer of funds from the CAR to the borrower or subgrantee. The CAR may also disburse funds to a contractor or to pay an allowable cost (e.g. personnel compensation) as provided in [2 CFR § 200.305\(b\)\(1\)](#). “Closeout” refers to the process EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed and to establish a COA to govern the use of retained and post-closeout program income.

A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower or subgrantee by means of ‘actual expense’ or ‘schedule.’ If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's or subgrantee's incurred costs.

- a. An ‘actual expense’ disbursement approach requires the borrower or subgrantee to submit documentation of the borrower's or subgrantee's expenditures (e.g., invoices) to the CAR prior to

requesting payment from EPA.

b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subgrantee's payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

B. Schedule for Closeout

1. Assuming any applicable cost share requirement has been satisfied (see Section IV.A.1.), there are two fundamental criteria for closeout:

a. Final payment of funds from EPA to the CAR following the end date for the project and budget period of the cooperative agreement as part of the closeout process or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and

b. Completion of all workplan and cleanup activities funded completely, or in part, by direct EPA funding from the amount of the award.

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all workplan and cleanup activities funded by the cooperative agreement are complete.

3. The CAR must follow the attached COA for any retained and future program income generated after closeout (i.e., post-closeout program income). Eligible uses include continuing to operate an RLF for brownfield site cleanup and/or other brownfield site activities as identified in the attached COA.

C. Compliance with Closeout Schedule

1. If the CAR fails to comply with the closeout schedule, any funds attributable to the cooperative agreement, including retained program income not obligated under loan agreement to a borrower or subgrantee, may be subject to federal recovery.

D. Final Requirements

1. The CAR must submit the following documentation:

a. The Final Cooperative Agreement Performance Report as described in [Section III.F.](#) of these Terms and Conditions.

b. Administrative and Financial Reports as described in the General Terms and Conditions of this agreement.

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

E. Recovery of RLF Assets

1. In case of termination, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under *Remedies for Noncompliance* at 2 CFR §§ 200.339 through 200.342 and CERCLA § 104(k) when EPA determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the EPA's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

^[1] When EPA uses the term “underserved communities” it has the meaning defined in Executive Order 13985: *Advancing Racial Equity And Support For Underserved Communities Through The Federal Government*, which defines “underserved communities” as “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life as exemplified in the preceding definition of equity.” As described in the Executive Order, the term “equity” means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, which may include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. It also includes “communities environmentally overburdened,” that is, a community adversely and disproportionately affected by environmental and human health harms or risks, and “disadvantaged, communities” as referenced in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, and defined in Office of Management and Budget's Memo M-21-28: Interim Implementation Guidance for the Justice40 Initiative.

^[2] Per EPA's General Term and Condition, the CAR must obtain prior approval from the EPA Grants Management Officer or Award Official for cumulative transfers of funds in excess of 10% of the total budget.

Davis-Bacon Labor Standards Term and Condition

[Instructions: Davis-Bacon labor standards apply to a federal financial assistance program when statute (i.e., typically the statute authorizing the grant program) mandates compliance with Davis-Bacon prevailing wage requirements. If Davis-Bacon labor standards are a requirement of the grant program, the NPM must work with OGC to develop the Programmatic Applicability introduction (item 1. Below). At a minimum, it must include the program name, authorizing statute incorporating the Davis-Bacon prevailing wage requirements, and a summary of the overall activities subject to Davis-Bacon under the funding opportunity. If available, include the prevailing wage classifications. Note: it may not be possible to include the prevailing wage classifications.

Once the NPM has completed updating this T&C, the NPM should work with Kathy Tsing-Choy (Tsing-Choy.Kathy@epa.gov) to upload the T&C to the program's FR Template, if one exists. If an FR Template does not exist for the program, the NPM should contact Jessica Durand (Durand.Jessica@epa.gov) to add it to the program's consolidated Programmatic T&Cs (if they exist), or upload it into NGGS as a

standalone Programmatic T&C. POs will not need to edit this T&C.]

1. Program Applicability

a. Program Name: Brownfields Program

b. Statute: Brownfields Direct Cleanup and Revolving Loan Fund Grants authorized by 42 U.S.C. 9604(k) are subject to Davis-Bacon and Related Acts (DBRA) as provided in 42 U.S.C. 9604(g)

c. Activities subject to Davis-Bacon:

1. **Brownfield Sites Contaminated with Hazardous Substances:** All construction, alteration, and repair activity involving the remediation of hazardous substances is subject to DBRA. This includes:
 - Excavation of contaminated soil;
 - Construction of caps, barriers, and structures which permanently house treatment equipment;
 - Installation of water supply wells/piping/connections;
 - Abatement of contamination in buildings; and
 - Demolition (if followed by new construction).
2. **Brownfield Sites Contaminated with Petroleum:** DBRA prevailing wage requirements apply when the project includes:
 - Excavation of contaminated soil and/or tank removal if followed by paving and concrete replacement, or if it is an extensive soil excavation project;
 - Construction of caps, barriers, and structures which permanently house treatment equipment; and
 - Installation of water supply wells/piping/connections and related excavation and replacement of contaminated soil.
 -
4. **Prevailing Wage Classification (e.g., Heavy Construction, Residential, Commercial) (optional):**
 - **Heavy Construction:** EPA has determined the "Heavy Construction" classification should be used when soliciting competitive contracts or issuing ordering instruments to existing contractors for:
 - Excavation and removal of contaminated soil;
 - Construction of caps or barriers;
 - Replacement of paving and concrete; and
 - Installation of water supply wells/piping/connections.
 - **Building Construction:** EPA has determined the "Building Construction" classification should be used when soliciting competitive contracts or issuing ordering instruments for the construction of:
 - Demolition (if followed by new construction);
 - Construction of structures which permanently house treatment equipment; and
 - Abatement of contamination in buildings (other than residential structures less than 4 stories in height).

- **Residential Construction:** EPA has determined the “Residential Construction” classification should be used when soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height.

[NPMs, POs, or GSs should not modify any information below this text.]

2. Davis-Bacon and Related Acts

[Davis-Bacon and Related Acts \(DBRA\)](#) is a collection of labor standards provisions administered by the Department of Labor, that are applicable to grants involving construction. These labor standards include the:

- Davis-Bacon Act, which requires payment of prevailing wage rates for laborers and mechanics on construction contracts of \$2,000 or more
- Copeland “Anti-Kickback” Act, which prohibits a contractor or subcontractor from inducing an employee into giving up any part of the compensation to which he or she is entitled; and
- Contract Work Hours and Safety Standards Act, which requires overtime wages to be paid for over 40 hours of work per week, under contracts in excess of \$100,000

3. Recipient Responsibilities When Entering Into and Managing Contracts:

a. Solicitation and Contract Requirements:

i. Include the Correct Wage Determinations in Bid Solicitations and Contracts: Recipients are responsible for complying with the procedures provided in [29 CFR 1.6](#) when soliciting bids and awarding contracts.

ii. Include DBRA Requirements in All Contracts: Include the following text on all contracts under this grant:

“By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#).”

b. After Award of Contract:

i. Approve and Submit Requests for Additional Wages Rates: Work with contractors to request additional wage rates if required for contracts under this grant, as provided in [29 CFR 5.5\(a\)\(1\)\(iii\)](#).

ii. Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions: Ensure contractor compliance with the terms of the contract, as required by [29 CFR 5.6](#).

4. Recipient Responsibilities When Establishing and Managing Additional Subawards:

a. Include DBRA Requirements in All Subawards (including Loans):

Include the following text on all subawards under this grant:

“By accepting this award, the EPA subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA Requirements for EPA Subrecipients](#).”

b. Provide Oversight to Ensure Compliance with DBRA Provisions: Recipients are responsible for oversight of subrecipients and must ensure subrecipients comply with the requirements in [29 CFR 5.6](#).

5. The contract clauses set forth in this Term & Condition, along with the correct wage determinations, will be considered to be a part of every prime contract covered by Davis-Bacon and Related Acts (see [29 CFR 5.1](#)), and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Department of Labor grants a variance, tolerance, or exemption. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

CLOSEOUT AGREEMENT

between

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

and

City of Dallas (Tracking Number: 4B02F41010)

This agreement governs post-closeout use of program income for the EPA Brownfields Revolving Loan Fund (RLF) operated under the assistance agreement number(s) listed in the Attachment, which were awarded under CERCLA § 104(k). This Closeout Agreement (COA) sets forth the terms and conditions for continued management and use of program income generated pre- and post-closeout. This COA has been prepared in accordance with the provisions of 2 CFR § 200.307(t) and 2 CFR § 1500.8(c).

If the recipient of this COA no longer has an open Cooperative Agreement (CA), it may be known as a "former" Cooperative Agreement Recipient (CAR). However, for simplicity this COA refers to the recipient as the CAR throughout.

1. As provided at 2 CFR § 200.307(t) and 2 CFR § 1500.8(c) after the end of the period of performance of the CA, the CAR may keep and use program income at the end of the CA (retained program income) and use program income earned after the CA period of performance (post-closeout program income) in accordance with the following COA, unless the CAR and EPA's Award Official or Grants Management Officer agree to modify the terms.

As of the effective date of this COA, the City of Dallas agrees to use and track all retained and post-closeout program income funds from the assistance agreement(s) listed in the Attachment in accordance with the requirements of this COA. The Attachment includes assistance agreements with a period of performance that has either ended or will end while this COA is in effect. The period of performance is identified as the project period in the Notice of Award for each assistance agreement listed in the Attachment.

This COA replaces the previous COA(s), if any, between the EPA and the City of Dallas, and those COAs are terminated. As of the effective date of this signed COA, all retained and

post-closeout program income from any COAs for assistance agreement numbers listed in the Attachment will be tracked by both EPA and the CAR as one under this COA for assistance agreement number 4B02F41010.

2. This COA is based on the FY22 RLF COA template. EPA plans to modify RLF COA templates every five years. EPA reserves the right to renegotiate the terms of this RLF COA every five years, in conjunction with the template change (e.g., next change will be in FY27). If the CAR agrees to continue to operate the RLF under a COA past FY27, the CAR shall work with EPA's Project Officer to update to the latest COA template. Otherwise, the Project Officer and CAR will negotiate a mutually acceptable disposition of unused program

income, and an Authorized EPA Official (e.g., Award Official or Grants Management Officer) will modify the COA accordingly.

3. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers, and other income generated from RLF operations including fees charged for assessments and proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
4. The CAR must deposit program income into an interest-bearing account unique to this COA (i.e., separate from RLF funds under an open grant). Interest earned on program income is considered additional program income.
5. The CAR shall use program income to continue to operate the revolving loan fund or for some other brownfield purpose as outlined in the terms of this COA.
6. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfield cleanup loans, program income may be used to fund the following brownfield activities:
 1.
 - a. Cleanup subgrants to eligible entities under CERCLA § 104(k)(1) and other nonprofit organizations (other than organizations exempt from taxation under Section 501(c)(4) of the Internal Revenue Code that lobby) for allowable activities (see Addendum);
 - b. Direct cleanup of sites by the CAR at the request of the property owner when the CAR has the necessary legal authority under state, tribal, or local law and the property owner is an eligible entity under CERCLA § 104(k)(1) or other nonprofit organization; the property can be owned by the CAR provided the CAR is not potentially liable under CERCLA § 107, but cannot be owned by a private, for-profit entity (NOTE: Determination of necessary legal authority is the responsibility of the CAR and must be documented in the CAR's RLF files);
 - c. Health monitoring of vulnerable populations near sites cleaned up or assessed¹;
 - d. Institutional control and engineering control monitoring to ensure continued protection of public health¹;

- e. Phase I Environmental Site Assessments at brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or ASTM E1527-21 (or the most current version) and, as applicable, state voluntary cleanup program requirements;
- f. Phase II Environmental Site Assessments and cleanup planning activities at brownfield sites;
- g. Area-wide planning for the assessment, cleanup and/or re-use of brownfield sites (e.g., developing a reuse vision for a brownfield site or area; conducting a site reuse assessment, market evaluation/feasibility assessment, infrastructure evaluation, and/or land use assessment; and developing a site disposition strategy and resource roadmap);
- h. Programmatic costs to manage and oversee the work being performed; and

¹ Health monitoring and institutional control and engineering control monitoring are not restricted to local governments. In addition, health monitoring is not restricted to hazardous substances (e.g., can be a pollutant or contaminant).

1. Cost share requirement of another EPA Brownfields grant, only if using program income generated from interest and fees, not principal repayments.
7. Retained and post-closeout program income shall not be used for site inventory work.
8. The CAR must ensure that program income is used on a property that is a brownfield site as defined at CERCLA § 101(39) and in accordance with Eligible and Ineligible Uses of the funds for the CAR, Borrower, and/or Subgrantees (see Addendum), unless otherwise noted as an eligible use of post-closeout program income in the terms and conditions of this COA. If the CAR wants to include a site under CERCLA §101(39)(C), the CAR must request that EPA make a site-specific determination.
9. Program income shall not be used to assess or clean up a site at which the CAR, borrower, subgrantee, or property owner is potentially liable under CERCLA § 107 unless it qualifies for a limitation or defense to liability under CERCLA. The CAR must make and retain a certification to that effect as part of the records for this COA. If asserting a limitation or defense to liability, the borrower, subgrantee, or property owner must state the basis for that assertion. When using program income for petroleum-contaminated brownfield sites, the CAR, borrower, subgrantee, or property owner shall certify that it is not a viable responsible party or potentially liable for the petroleum contamination at the site and retain a certification to that effect as part of the records for this COA. The CAR may consult with the state/tribal response program and/or EPA for assistance with this matter.
10. The CAR must ensure that borrowers and subgrantees are not currently suspended, debarred, or otherwise declared ineligible under 2 CFR § 180. The CAR may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.
11. The CAR must comply with EPA regulations at 40 CFR § 7 regarding non-discrimination in EPA funded programs.
12. All assessment and cleanup work funded with program income must continue to be performed in accordance with state or tribal environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subgrantees conduct assessments or cleanups through a State or Tribal

response program, or one does not exist, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.

13. All brownfield sites that will be addressed using the post-closeout program income must be located in or within 100 miles of the geographic boundary described in the scope of work for assistance agreement number(s) listed in the Attachment (i.e., the EPA-approved workplan for the original CA), as long as work outside that geographic boundary is legally permissible.
14. The CAR must continue to perform community involvement activities on all activities funded by post-closeout program income. For example, the CAR must solicit input on cleanup alternatives and proposed actions from local communities. Outreach must be

extended to communities with environmental justice challenges, communities with economically disadvantaged areas or remote areas, and communities with a health risk related to exposure to hazardous waste or other public health concerns, as applicable. Cleanup alternatives must include considerations of climate change (e.g., reducing greenhouse gas emissions) and greener cleanup.

15. The CAR shall submit Annual Post-Closeout Reports by October 31st of each year following the effective date of this COA until the COA ends, unless EPA's Project Officer agrees to an extension of time due to extraordinary circumstances. The annual reports shall include the following information:

1.
 - a. A cover page indicating the CAR's organization, assistance agreement number (s) listed in the Attachment, annual report number (i.e., 1, 2 or 3), dates for the reporting period, persons/organizations preparing and submitting the report, and the date of the report submission.
 - b. A summary of the activities conducted during the reporting period (to include community involvement activities), a list of reports and documents generated during the reporting period, and a budget summary table reflecting the expenses incurred and program income received. Report must specify total program income accrued since the grant was awarded (retained plus post-closeout), as well as the current program income balance as of September 30th (i.e., one month prior to report due date). Program income accounting records must differentiate program income generated from interest and fees, versus program income generated from principal repayments.
 - c. (1) A summary of updates made in the Assessment, Cleanup, and Redevelopment Exchange System (ACRES) for the reporting period. All ACRES data entered for post- closeout program income (i.e., related to the assistance agreement[s] listed in the Attachment) must be associated with the assistance agreement number on the title page of this COA. ACRES data associated with open assistance agreements whose period of performance has not ended must be associated with the applicable open assistance agreement number. These updates must include interim progress (e.g., loan signed, assessment started, clean up started) and any final accomplishments (e.g., assessment completed, clean up completed, contaminants removed, institutional controls, engineering controls) at sites with activities funded through this COA.
2. The CAR must complete and submit these updates using the relevant portions of the Property Profile Form in ACRES. The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or at a minimum, prior to submitting the Annual Post-Closeout Report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form. Note that ACRES reporting requirements can change over time, and the CAR is responsible for

complying with the latest ACRES reporting requirements for RLFs at the time of each annual report submission (e.g., reporting current program income balance).

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 3. If the assistance agreement numbers listed in Attachment 1 only include agreements awarded before 2003 (i.e., the assistance agreement number includes "BL"), the CAR must contact the EPA Project Officer regarding how to meet these requirements.
16. The CAR must maintain adequate accounting records for how retained and post-closeout program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained and post-closeout program income.
17. Termination of this COA occurs when no program income remains to be disbursed and all loans have been repaid, the recipient decides to discontinue carrying out the activities and requests termination of the COA, or EPA determines that the CAR is not effectively deploying the program income. For each of these three situations, EPA's Grants Management Officer will issue a letter to the CAR stating that the COA is terminated as of the effective date and the conditions of the termination.
1.
 - a. o remaining program income or future loan repayments. The CAR shall notify EPA's Project Officer in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this COA. The notification must provide a final report regarding the relevant COA information in the format specified in item 15, above. The Project Officer will coordinate with EPA's Grants Management Officer, who has 90 days from receipt of this notification to submit any objections or agree to the termination of this COA, unless the Grants Management Officer informs the CAR in writing that this 90-day period has been extended.

1.

- b. Discontinuance of the COA. The CAR shall notify EPA's Project Officer in writing that it has decided to discontinue performing the COA. The notification must provide a final report with the relevant COA information in the format specified in item 15, above. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA's Grants Management Officer. CARs must also describe the status and amounts of principal and interest payments that will take place after the COA is terminated. Unless waived by the Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the COA has been terminated.

1.

- c. EPA revocation of the COA. EPA will assess whether the CAR has effectively carried out the COA if the recipient holds more than \$500,000 in program income as of the end of the federal fiscal year (September 30th) three (3) years after the effective date of this COA and annually thereafter. However, if the CAR previously had a COA which included this assessment after three (3) years (e.g., a COA which started in 2018 or later), the first assessment will occur three (3) years from the effective date of that previous COA (i.e., the three-year period does not restart with this COA). This assessment will take into account the amount of program income the CAR has disbursed within the three-year (or annual) period, whether the program income being held is retained program income or post-closeout program income, and other factors relevant to ensuring that the recipient deploys program income in a timely manner. EPA's Grants

Management Officer may revoke the COA and direct the recipient to return the unused program income to EPA based on this assessment.

18. In accordance with 2 CFR § 200.334(e), the CAR shall maintain appropriate records to document compliance with the requirements of the COA (i.e., records relating to the use of retained and post-closeout program income) for a three-year period following the end of the COA, unless one of the conditions specified in the regulation applies. EPA may request access to these records to verify that retained and post-closeout program income has been used in accordance with the terms and conditions of this COA. Records and documents relating solely to performing the CA prior to close out may be disposed of in accordance with 2 CFR § 200.334.
19. EPA's Award Official or Grants Management Officer must agree to any modifications to this COA other than the addition of assistance agreements to the Attachment. The CAR must agree to all modifications to this COA including the addition of program income from closed cooperative agreements added to the list in the Attachment. Agreed-upon modifications must be in writing and signed by each party. Oral or unilateral modifications shall not be effective or binding.
20. If the CAR expends retained and post-closeout program income in a manner inconsistent with this COA, EPA may take actions authorized under 2 CFR § 200.339, Remedies for Noncompliance.
21. This agreement along with the Attachment and Addendum are the entire COA between the EPA and CAR. If any provisions of this COA are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this COA that have not been invalidated.
22. No other federal requirements apply to the use of program income under the terms of this COA.
23. This agreement becomes effective upon the signature of both parties.

Marsha Lay

USEPA Region 6 Brownfields Project Officer Lay.Marsha@epa.gov

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goz1 wosu

City of Dallas Brownfields Program Manager ngozi.nwosu@dallas.gov

214-670-6971

If changes are made to the POCs above, the respective party must notify the other within 30 days of the change.

Signatures

CA

6/30/2023

Date

MONICA SMITH

EPA Regional Approval Official

Date

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Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees

1. To the extent allowable under the EPA-approved COA, the CAR may use COA funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include:
 - a. Determining whether RLF assessment and cleanup activities at a particular site are authorized by CERCLA § 104(k).
 - b. Ensuring that an RLF assessment and cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
 - c. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
 - d. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan (previously known as a Community Relations Plan) which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
 - e. Establishing a public Administrative Record for each site.
 - f. Developing a Quality Assurance Project Plan (QAPP) as described by 2 CFR § 1500.12 with the exception of paragraph (d). The specific requirement for a QAPP is outlined in Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance.
 - g. Ensuring the adequacy of each RLF assessment or cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
 - h. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
1. Using a portion of a direct cleanup, loan, or subgrant to purchase environmental insurance for the site. The direct cleanup, loan, or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under *Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees*.
- J. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; annual post-closeout reporting to EPA including preparation of Property Profiles and all ACRES reporting; awarding, managing and

monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.332; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.

- k. Borrower and subgrantee progress reporting to the CAR is an eligible programmatic cost to the extent required by the terms of the loan or subgrant.
 - 11. Direct and indirect administrative costs for managing the RLF.

- 1.
2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites throughout the term of the COA.

Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees

1. COA funds shall not be used by the CAR, borrower, and/or subgrantee for any of the following activities:
 - a. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
 - b. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use).
 - c. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
 - d. To pay for a penalty or fine.
 - e. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR

§ 200, Subpart E.

ATTACHMENT

The following assistance agreement numbers are subject to this COA. As additional assistance agreements are added, this page will be updated and the COA will be re-signed by both EPA's Approval Official and the CAR. No other changes may be made to the COA other than adding assistance agreements in this Attachment.

- 4B02F41010