

# **FY19 Multipurpose Cooperative Agreement**

## **Terms and Conditions**

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Multipurpose Cooperative Agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k).

### **I. GENERAL FEDERAL REQUIREMENTS**

**NOTE: For the purposes of these Terms and Conditions, the term “assessment” includes eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA-approved workplan.**

#### **A. Federal Policy and Guidance**

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2019 competition for Brownfield Multipurpose cooperative agreements.
2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 104(k). The CAR shall also ensure that assessment and 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 conduct cleanups through a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer to ensure the proposed cleanup is protective of human health and the environment.
4. A term and condition or other legally binding provision shall be included in all subawards 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), federal applicable 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 § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

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). Assessment activities generally do not involve construction, alteration, and repair within the meaning of the Davis-Bacon Act. The recipient must contact the EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary. Cleanup activities are likely to require Davis-Bacon compliance. For more detailed information on complying with Davis-Bacon, please see the Davis-Bacon Addendum to these terms and conditions.

## **II. SITE ELIGIBILITY REQUIREMENTS**

### **A. Eligible Brownfield Site Determinations**

1. The CAR may only clean up sites it solely owns that are within the target area specified in the workplan for this cooperative agreement. The CAR must retain ownership of the site(s) while Brownfield Multipurpose Grant funds are disbursed for the cleanup of the site(s) and consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approved a different ownership arrangement at the time of award or the EPA Project Officer advises the CAR that a different ownership is acceptable to EPA for a site after the award.
2. The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR’s workplan by EPA. The information that must be provided includes whether 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 and/or has defenses to CERCLA liability, and documentation that the CAR owns the site it intends to clean up.
3. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination 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 assessing 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.

#### 4. 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 addressing 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 addressing 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.4. above, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated 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 necessary information for EPA to make the determinations described in Section II.A.4.b. above.

## **B. Continuing Obligations for CARs**

1. The CAR shall not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA § 107. The CAR 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 to maintain its status. If the CAR 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 facility 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 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 continuing obligations under this agreement, the CAR is 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 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 Sufficient Progress Condition (No. 22) in the General Terms and Conditions. If after 2 years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.339 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.339, depending on the circumstances. Sufficient progress is indicated when 35% of funds have been drawn down and disbursed for eligible activities and/or when sites are prioritized or an inventory has been initiated (if necessary), initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed, an appropriate remediation plan is in place for at least one eligible brownfield site, institutional control development (if necessary) has commenced, institutional control development (if necessary) has commenced, and/or a solicitation for services has been issued.

#### **B. Substantial Involvement**

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts. EPA will not direct or recommend that the CAR enter into a contract with a particular entity.
  - b. Substantial EPA involvement includes brownfield property-specific funding determinations described in Section II.A.2. If the CAR awards a subaward for site assessment and/or cleanup, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in CERCLA § 104(k)(5)(B)(i)(IV) applies. This prohibition does not allow the subrecipient to use EPA cooperative agreement funds to address a site for which the subrecipient is potentially liable under § 107 of CERCLA.

- c. Substantial EPA involvement may include reviewing financial and program performance reports, monitoring all reporting, record-keeping, and other program requirements.
  - d. EPA may waive any of the provisions in Section III.B.1. with the exception of property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers 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 assessments and 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. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site assessment and cleanup activities at a given site, if it does not have such a professional on staff.
2. Funds expended under this cooperative agreement must be used to complete at least one Phase II environmental site assessment, to conduct cleanup activities at one or more brownfield site within the target area, and to produce one overall plan for revitalization of one or more sites in the target area (if a plan does not already exist), as specified in the workplan. If a CAR is not making sufficient progress and appears unlikely to complete these cooperative agreement requirements, EPA may terminate this agreement under 2 CFR § 200.339 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.339, depending on the circumstances, as referenced in Section III.A.
3. The CAR is responsible for ensuring that funding received under this cooperative agreement does not exceed the statutory \$200,000 funding limitation to assess an individual brownfield site. Waiver of this funding limit for site-specific assessment activities at a brownfield site must be submitted to the EPA Project Officer and approved in writing prior to the expenditure of funding exceeding \$200,000. In no case may funding for site-specific assessment activities exceed \$350,000 on a site receiving a waiver.

5. 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 (PO) no later than 90 days after the date of this award and work with the designated Regional 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 § 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

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

#### D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> quarter). These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period,

including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
  - a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Multipurpose cooperative agreement 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 project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
  - e. A list of the properties where assessment, cleanup, and planning activities were performed and/or completed during the reporting quarter.
  - f. A budget recap 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; program income generated and used (if applicable); and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, of cost overruns or high unit costs, and other pertinent information.

Note: Each property where assessment and 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 progress report (see Section III.E. below).

3. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess and clean up specific properties under this cooperative agreement.
4. In accordance with 2 CFR § 200.328(d)(1), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

## **E. Property Profile Submission**

1. The CAR must report on interim progress (i.e., assessment started and clean up started) and any final accomplishments (i.e., assessment completed, clean up required, clean up completed, contaminants, institutional controls, engineering controls) by completing and submitting relevant portions of the 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 progress report to the EPA Project Officer. The CAR must utilize the ACRES system.

## **F. Final Technical Cooperative Agreement Report with Environmental Results**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328, *Monitoring and Reporting Program Performance*), the CAR agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement and at least one reproducible copy suitable for printing. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:
  - a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;
  - b. reasons why anticipated outputs/outcomes were not met; and
  - c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

## **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

### **A. Cost Share Requirement**

1. Brownfield Multipurpose cooperative agreements require the recipient to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source unless a Federal statute provides otherwise) of \$40,000. The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement, be supported by adequate documentation, and otherwise comply with 2 CFR § 200.306. The recipient may use allowable administrative costs borne by the recipient or a third party to meet its cost share obligation, including indirect costs, subject to the 5% limit on administrative costs described in the Administrative Cost clause in Section IV. Administrative costs, whether paid for by EPA or used as cost share (or a combination of both), may not exceed the 5% limit.

## **B. Transfer of Funds**

1. For the purposes of EPA's General Term and Condition "Transfer of Funds" the term "activities" includes assessment, planning, and cleanup. The CAR must obtain prior approval for cumulative transfers of funds in excess of 10% of the total budget among these activities.

## **C. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and clean up sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites in the target area, and outreach. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:
  - a. Determining whether assessment and cleanup activities at a particular site are authorized by CERCLA § 104(k).
  - b. Ensuring that an assessment and cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
  - c. Limited Site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
  - d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCAs) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
  - e. Ensuring that public participation requirements are met. This includes preparing a Community Relations Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
  - f. Establishing an Administrative Record.
  - g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.11. 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>.
  - h. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment, or remediation of the site. Funds may 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*.
  - i. Any other eligible programmatic costs, including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and

- managing subawards to the extent required to comply with 2 CFR § 200.331 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out community involvement pertaining to the assessment and cleanup activities.
3. Under CERCLA § 104(k)(B), CARs and subrecipients may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for this agreement is \$40,000. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR or subaward administration by subrecipients paid for by EPA under the cooperative agreement may not exceed this amount. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and may not classify the same types of cost in both categories.

Eligible cooperative agreement and subaward 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 § 200.327.
  - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
  - vii. Closeout under 2 CFR § 200.343 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 subawards 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.

#### **D. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following

activities:

- a. 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 brownfield assessment activities or 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);
  - c. General community visioning, area-wide zoning updates, design guideline development, master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates – these activities are all ineligible uses of grant funds if unrelated to advancing cleanup and reuse of brownfield sites within the target area. Note: for these types of activities to be an eligible use of grant funds, there must be a specific nexus between the activity and how it will help further cleanup and reuse of the priority brownfield sites. This nexus must be clearly described in the workplan for the project;
  - d. Job training unrelated to performing a specific assessment at a site covered by the cooperative agreement;
  - 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 subaward recipient 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 assessment; and
  - i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.
2. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
  - b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfield site for which EPA has not made

a property-specific funding determination.

## **E. Interest-Bearing Accounts**

1. The CAR must deposit advances of cooperative agreement funds and program income (i.e., fees) in an interest-bearing account.
  - a. For interest earned on advances, CARs are subject to the provisions of 2 CFR 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.

## **V. MULTIPURPOSE REQUIREMENTS**

### **A. Authorized Activities**

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCAs), 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 (e.g., sea level rise, 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, 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.
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**

1. When environmental data are collected as part of the brownfield assessment and cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.11 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. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 30 days

prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (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 date from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The recipient shall develop Quality Assurance Project Plans (QAPP) to support all environmental data operations in accordance with “The EPA New England Planning and Documenting Brownfields Projects - Generic Quality Assurance Project Plans and Site Specific QAPP Addenda,” March 2009. The term “environmental data operations” refers to any measurement or information that describe environmental processes, conditions, or location; ecological or health effects; produced from models or surveys; compiled from other sources such as data bases and literature; or the performance of environmental technology. The Quality Assurance Project Plan must be approved by EPA before data collection and/or data generation activities begin. The recipient will submit the QAPP to the following:

EPA Project Officer (see page 1 of the assistance agreement), and the

Regional Quality Assurance Manager Nora Conlon ([conlon.nora@epa.gov](mailto:conlon.nora@epa.gov)) or other QA manager specified by the assigned Project Officer.

No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP. Additional information on these requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

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

## C. Community Relations, Public Involvement, and Community Outreach

1. All cleanup activities require a site-specific Community Relations Plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.
2. 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 include the following statement: "**Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA.**"
  - b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.
3. The CAR agrees to notify the EPA Project Officer 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.

## D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all appropriate inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-13 "*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*," or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in "*All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content*", (Publication Number: EPA 560-F-14-003). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the

site or to comply with applicable state standards.

2. AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed “*All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients*” (Publication Number: EPA 560-F-17-194) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA’s website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields). The completed checklist must include:
  - a. An ***opinion*** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.
  - b. An identification of “***significant***” ***data gaps*** (as defined in 40 CFR § 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.
  - c. ***Qualifications and signature*** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:
    - “[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part.”
    - “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

**Note:** Please use either “I” or “We.”
  - d. In compliance with §312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation***, if the environmental professional has such an opinion.
3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR Part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to

correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR § 200.338 through 2 CFR § 200.342. If a recipient willfully fails to correct the deficiencies EPA may consider other available remedies under 2 CFR § 200.342.

#### **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; cleanup standards used; responses to public comments; and verification that shows that cleanup is 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.

#### **F. Implementation of Cleanup Activities**

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented.
2. If the CAR is unable or unwilling to complete the 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 Assessment and Cleanup Activities**

1. The CAR shall properly document the completion of all activities described in the EPA-approved workplan. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows assessments and cleanups are complete. Documentation of completed the completed cleanups must be included as part of the Administrative Record.

#### **H. Inclusion of Additional Terms and Conditions**

1. In accordance with 2 CFR § 200.333 the CAR shall maintain records pertaining to the cooperative for a minimum of three (3) years following submission of the final financial report unless one or more of the conditions described in the regulation applies. The CAR shall provide access to records relating to assessments and cleanups supported with Multipurpose cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.336.
2. The CAR has an ongoing obligation to advise EPA if it is assessed any penalties resulting from environmental non-compliance at the sites subject to this agreement.

## **VI. 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; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

### **A. Payment Schedule**

1. The CAR may request advance payment from EPA pursuant to 2 CFR § 200.305(b)(1) and the prompt disbursement requirements of the General Terms and Conditions of this agreement.

This requirement does not apply to states which are subject to 2 CFR § 200.305(a).

### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 2 CFR § 200.343. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.
2. The CAR, within 90 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement 2 CFR Part 200.
  - a. The CAR must submit the following documentation:
    - i. The Final Technical Cooperative Agreement Report as described in Section III.F. of these Terms and Conditions.
    - ii. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.
  - b. The CAR must ensure that all appropriate data have been entered into ACRES or all Property Profile Forms are submitted to the EPA Project Officer.
  - c. As required by 2 CFR § 200.343, the CAR must immediately refund to EPA any balance of unobligated (unencumbered) advanced cash or accrued program income that is not authorized to be retained for use on other cooperative agreements.