



U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

ASSISTANCE ID NO.

PRG	DOC ID	AMEND#
BF -	97177901	- 0

DATE OF AWARD
09/21/2007

TYPE OF ACTION
New

MAILING DATE
09/28/2007

PAYMENT METHOD:
Advance

ACH#
pend

RECIPIENT TYPE:
Intermunicipal

Send Payment Request to:
Las Vegas Finance Center
PO Box 98515
Las Vegas, NV 89193-8515
Tel: 702-798-2406
Fax: 702-798-2423

RECIPIENT:

Southern New Hampshire Planning Commission
438 Dubuque Street
Manchester, NH 03102-3546
EIN: 02-0274713

PAYEE:

Southern New Hampshire Planning Commission
438 Dubuque Street
Manchester, NH 03102-3546

PROJECT MANAGER

Jack Irvin Munn
438 Dubuque Street
Manchester, NH 03102-3546
E-Mail: jmunm@snhpc.org
Phone: 603-669-4664

EPA PROJECT OFFICER

Dorrie Paar
1 Congress Street, Suite 1100, HIO
Boston, MA 02114-2023
E-Mail:
Phone: 617-918-1432

EPA GRANT SPECIALIST

MaryEllen Stanis
Grants Management Office, MGM
E-Mail: Stanis.MaryEllen@epamail.epa.gov
Phone: 617-918-1173

PROJECT TITLE AND DESCRIPTION

Southern NH Region Brownfields Program
This assistance agreement will provide funding to Southern New Hampshire Planning Commission to inventory and assess brownfields sites in Hillsborough, Rockingham, and Merrimack counties and the municipalities of Auburn, Bedford, Candia, Chester, Derry, Goffstown, Hooksett, Londonderry, Manchester, New Boston, Raymond, and Weare. Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

BUDGET PERIOD

10/01/2007 - 09/30/2010

PROJECT PERIOD

10/01/2007 - 09/30/2010

TOTAL BUDGET PERIOD COST

\$200,000.00

TOTAL PROJECT PERIOD COST

\$200,000.00

NOTICE OF AWARD

Based on your application dated 07/05/2007, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$200,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$200,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)

ORGANIZATION / ADDRESS

EPA New England
1 Congress Street, Suite 1100

Boston, MA 02114-2023

AWARD APPROVAL OFFICE

ORGANIZATION / ADDRESS

U.S. EPA, EPA New England

One Congress Street, Suite 1100
Boston, MA 02114-2023

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

SIGNATURE OF AWARD OFFICIAL

Digital signature applied by EPA Award Official

TYPED NAME AND TITLE

Linda Murphy, Dir. Office of Admin. & Resource Management

DATE

09/21/2007

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE

TYPED NAME AND TITLE

David John Preece, Executive Director

DATE

10/2/07

EPA Funding Information

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

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	07010CG048	07	E4	0100AG7	402D79EBP	4114	G100OR00		200,000
									200,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$26,000
2. Fringe Benefits	\$0
3. Travel	\$4,000
4. Equipment	\$0
5. Supplies	\$2,000
6. Contractual	\$158,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$200,000
12. Total Approved Assistance Amount	\$200,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$200,000
15. Total EPA Amount Awarded To Date	\$200,000

Administrative Conditions

1. National Term and Condition:

Drug-Free Workplace Certification for all EPA recipients

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

2. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended).

Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

3. LOBBYING AND LITIGATION - ALL RECIPIENTS

Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, *Lobbying and Litigation Certificate*, within 90 days after the end of project period. The form can be accessed at <http://www.epa.gov/ogd/forms/adobe/5700-53.pdf>.

Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

4. LOBBYING - ALL RECIPIENTS

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying* . The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

5. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

6. RECYCLING TERM AND CONDITION

ALL RECIPIENTS:

In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition* , the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These

guidelines are listed in 40 CFR 247.

7. SUSPENSION & DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

8. Unliquidated Obligations Term and Condition: Part 31

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Financial Status Report – also called the SF269 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Completed SF269s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

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

9. ADVANCE METHOD OF PAYMENT

- a. Initial Advance. The recipient must request the initial advance payment on a SF270, Request for Advance or Reimbursement. The SF270 should be faxed to the Las Vegas Finance Center. No payment will be made to the recipient until the executed assistance agreement is returned to the Grants Management Office.

The amount of the initial advance will be based on the recipient's projected cash requirements, not to exceed the first three months.

- b. Interim Payments. After the initial advance, the recipient agrees to fax a SF270, Request for Advance or Reimbursement to the Las Vegas Finance Center as costs are incurred on the assistance agreement. This request will report cumulative expenditures incurred under the assistance agreement and the recipient's projected cash requirements for the next advance period. Recipients are authorized and encouraged to request payment at least quarterly but no more frequently than monthly.
- c. The recipient agrees to sign and return the Standard Form 3881, ACH Vendor/Miscellaneous Payment Enrollment Form, to the Las Vegas Finance Office indicated on the memorandum dated December 11, 2006. As required by Public Law 104-134; Debt Collection Improvement Act of 1996, Electronic Fund Transfer payments will not be processed until this form has been received by the Finance Office.

10. SMALL BUSINESS IN RURAL AREAS

If a recipient awards a contract under an assistance agreement, the recipient agrees and is required to utilize the following affirmative steps:

- a. Placing Small Business in Rural Area (SBRAs) on solicitation lists;
- b. Ensuring that SBRAs are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
- d. Establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
- e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
- f. Requiring the contractor, if it awards subcontracts to take the affirmative steps in subparagraphs a. through e. of this condition.

11. MBE/WBE FAIR SHARE

- A. The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements:

1. The recipient accepts the applicable FY 1998 Minority Business Enterprise (MBE)/Womens' Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the **NH DES** as the current MBE/WBE "fair share" goals/objectives as follows:

	MBE	WBE
Construction	2.55%	6.39%
Supplies/Services/Equipment Combined Rate:	.4%	1.6%

2. (a) The recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and Historically Black Colleges and Universities.

(b) For assistance agreements related to research under the Clean Air Act Amendments of 1990, the recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, disabled Americans, Historically Black Colleges and Universities, Colleges and Universities having a student body in which 40% or more of the students are Hispanic, minority institutions having a minority student body of 50% or more, and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.
3. The recipient agrees to include in its bid documents the applicable "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.
4. The recipient agrees to follow the six affirmative steps or positive efforts stated in 40 CFR §30.44(b), 40 CFR §31.36(e), or 40 CFR §35.6580, as appropriate, and retain records documenting compliance.
5. The recipient agrees to submit an EPA form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to:

U.S. Environmental Protection Agency
Office of Administration and Resource Management
Grants Management Office (MGM)
1 Congress Street, Suite 1100
Boston, MA 02114-2023

within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, the recipient agrees to submit an EPA form 5700-52A to:

U.S. Environmental Protection Agency
Office of Administration and Resource Management
Grants Management Office (MGM)
1 Congress Street, Suite 1100
Boston, MA 02114-2023

by October 30 of each year.

6. If race and /or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "fair share" objective.
- B. EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

Programmatic Conditions

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 work plan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall insure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.

- b. CERCLA 104(g) requires that recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts “funded in whole or in part” with funds provided under this agreement. If the CAR uses funds awarded under this agreement to contract for construction, repair or alteration work, it must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
- c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.
- d. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR’s work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.
- b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination.

The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

2 a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):

- (1) that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
- (2) that the State determines there is "no viable responsible party" for the site;
- (3) that the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
- (4) that the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

- b. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
- c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the Agency may terminate this agreement.
3. Assessment funding for any eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA and then funding is not to exceed \$350,000 at the site subject to the waiver.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under §107 of CERCLA.
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
 - a. EPA's review of any project phase, document, or cost incurred under this

cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.

- b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
- c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

(Note: Cooperative Agreement Recipients expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.)

D. Quarterly Progress Reports

1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:

- a. Documentation of progress at meeting performance outcomes/outputs, project narrative, project time line and an explanation for any slippage in meeting established output/outcomes.
 - b. An update on project milestones.
 - c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
 - d. If applicable, quarterly reports must specify costs incurred at petroleum contaminated brownfields sites.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific sites under this grant.
 3. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA approved work plan.
 4. The CAR must complete and submit relevant portions of the Property Profile Form reporting the commencement of a Phase I assessment, the expenditure of \$1,000 or more of grant funds at a property or the completion of a property assessment. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on-line reporting system, the Assessment, Cleanup and Redevelopment Exchange System (ACRES), by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on-line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>
 5. In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

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

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:
 - a. Determining whether assessment activities at a particular site are authorized by CERCLA 104(k);
 - b. Ensuring that an assessment complies with applicable requirements under Federal

and State laws, as required by CERCLA 104(k);

- c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section B.

- d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. *Local Governments only. No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in Task 1 of the EPA approved work plan. The CAR must maintain records on funds that will be used to carry out Task 1 of its EPA approved work plan to ensure that no more than 10% of its funds are used for brownfield program development and implementation (including monitoring of health and institutional controls).*

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
 - a. Cleanup activities;
 - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
 - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
 - d. To pay for a penalty or fine;
 - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
 - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;
 - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and

- h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.

- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.
- b. Ineligible grant administration costs include direct costs for:
 - (1) Preparation of applications for Brownfields grants;
 - (2) Record retention required under 40 CFR 31.42;
 - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
 - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
 - (5) Maintaining and operating financial management systems required under 40 CFR 31;
 - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
 - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
 - (8) Close out under 40 CFR 31.50.

3. Cooperative agreement funds may not be used for any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

- c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.

2. The CAR must deposit advances of grant funds and program income (e.g., fees) in an interest bearing account.

- a. Interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
- b. Interest earned on program income is considered additional program income.

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

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

B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

2. The recipient will develop a Quality Assurance Project Plan (QAPP) to support all environmental data operations in accordance with *Quality Assurance Guidance for Conducting Brownfields Assessments*, EPA 540-R-98-038, September 1998, and/or *EPA Requirements for*

Quality Assurance Project Plans, EPA 240-B-01-002, March 2001. The term “environmental data operations” refers to activities involving the collection, generation, compilation, analysis, evaluation and use of environmental data. The Quality Assurance Project Plan must be approved by EPA before the scheduled commencement of data collection and/or data generation activities. The recipient will submit a Quality Assurance Project Plan to the following:

EPA Project Officer (HIO)
U.S. Environmental Protection Agency
Suite 1100, 1 Congress Street
Boston, MA 02114-2023

And

Nora Conlon
EPA Quality Assurance Officer (EQA)
U.S. Environmental Protection Agency
11 Technology Drive
North Chelmsford, MA 01863-2431

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA §104(k)(2)(B)(ii) and CERCLA §101(35)(B), the CAR shall ensure that a “Phase I” site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 “Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process,” or EPA's All Appropriate Inquiries Final Rule. This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award

of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- (i) The affected party,
 - (ii) Any member of his immediate family,
 - (iii) His or her partner, or
 - (iv) An organization which employs, or is about to employ, any of the above,
- has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50.