



Franklin Regional  
Council of Governments

**Request for Proposals  
For Environmental Engineering Services  
in Support of a Regional Brownfields Assessment Program  
in Franklin County, Massachusetts  
RFP# 2024-2120**

The Franklin Regional Council of Governments (FRCOG) has been awarded a U.S. Environmental Protection Agency (EPA) grant to inventory and assess brownfields sites potentially impacted by hazardous materials and/or petroleum products in Franklin County, MA. The FRCOG is seeking a qualified environmental professional services contractor to conduct Brownfields environmental assessment activities, in accordance with State and Federal requirements. The FRCOG will accept sealed proposals for Environmental Engineering Consulting Services. Contractors must submit separate sealed non-price technical proposals and price proposals, plainly marked as such, and labeled "RFP 2024-2120 Brownfields Services Proposal" in the lower left corner.

Prospective Contractors must request the detailed Request for Proposals (RFP) from <https://frcog.org/bids>. By registering for the RFP, any subsequent Addenda, Meeting Notices or any other correspondence related to the process will be automatically provided via email.

All proposals must be received by Laura Phelps, Chief Procurement Officer, FRCOG, 12 Olive Street, Suite 2, Greenfield, MA 01301-3313 by **Tuesday, April 16, 2024 at 2:00 p.m.** **If the FRCOG offices are closed for inclement weather or another unforeseeable event, proposals must be received no later than Wednesday April 17, 2024 at 2:00 p.m.**

There will be an **information session** on this RFP on **Tuesday, March 19, 2024** in the 1<sup>st</sup> floor conference room at 12 Olive Street, Greenfield MA 01301 or join via Zoom <https://us02web.zoom.us/j/8693522935?omn=85919380739> at **10:30 a.m.** Attendance at the information session is optional but encouraged. **The deadline for written questions is Tuesday, March 26, 2024 at 2:00 p.m.**

Proposals that are incomplete, not properly endorsed or signed, or otherwise contrary to instructions may be rejected as non-responsive by the Chief Procurement Officer. Qualified Minority and Women owned environmental engineering consulting firms are encouraged to apply. The FRCOG reserves the right to accept or reject any or all proposals, in total or in part, as they deem in the best interest of the public.

FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS  
*Laura Phelps, Chief Procurement Officer*  
*February 29, 2024*

The Franklin Regional Council of Governments (FRCOG) does not discriminate on the basis of race, color, national origin, sex, age, disability, or gender with respect to admission to, access to, or operation of its programs, services or activities. If you would like accessibility or language accommodation, please contact the Title VI Coordinator at 413-774-3167 (voice) (MA Relay System: 800-439-2370), 413-774-3169 (fax), or [civilrights@frcog.org](mailto:civilrights@frcog.org) (e-mail).

## 1.0 INTRODUCTION

The Franklin Regional Council of Governments (FRCOG) is the regional planning agency and regional & municipal service organization for the twenty-six municipalities of Franklin County, Massachusetts. The FRCOG was awarded a U.S. Environmental Protection Agency (EPA) FY2024 brownfield assessment grant for properties impacted by hazardous materials and/or petroleum products located in Franklin County, Massachusetts. The FRCOG has administered a Regional Brownfields Program for over two decades. This latest EPA award is the 8<sup>th</sup> Cooperative Agreement for assessment activities received by the FRCOG. The goals of the FRCOG Regional Brownfields Program is as follows.

- To assess Brownfield sites in order to support their clean-up, reuse and redevelopment;
- To eliminate blight and health risks, particularly in low and moderate income and environmental justice neighborhoods;
- To encourage business and/or housing development in previously developed areas, preferably that have water, wastewater and transportation infrastructure;
- To provide clean industrial and commercial sites ready for reuse, which would enable existing and future businesses to grow and create jobs, and to increase local tax bases;
- To preserve rural communities by reducing the need to convert farmland for industrial and commercial purposes; and
- To protect environmental resources including rivers, sensitive habitats, and public drinking water supplies.

The FRCOG will act as the lead agency in collaboration with the municipalities of Franklin County, members of the FRCOG Brownfield Steering Committee, and other regional organizations and agencies to implement this program. The FRCOG has undertaken a regional approach to Brownfields site assessments, since most rural communities do not have the capacity to implement this program on their own. The specific site assessment activities for the FRCOG Regional Brownfields Program are:

- To educate property owners, potential developers and municipal officials about the FRCOG Brownfields Program's site assessment activities, as well as identifying funding sources for clean-up;
- To involve municipal officials and residents of impacted neighborhoods in the public education process and provide information about the results of the site assessments completed;
- To update the inventory and GIS mapping of brownfields sites, and to select additional sites identified by member municipalities and accepted by the Brownfields Steering Committee based upon criteria established by the Committee;

- To develop strategies to gain site access to conduct environmental site assessments for the protection of public health and safety, including negotiation of site access agreements;
- To prepare public outreach materials including a brochure and information on the FRCOG website; and
- To complete Phase I and Phase II Environmental Site Assessments, and Phase III Remediation or Reuse Plans at the sites identified, to the extent permitted by funding, and in accordance with State and Federal requirements.

The Brownfields Steering Committee provides guidance for the program and includes representatives from past and present municipalities participating in the program, the Franklin County Regional Housing & Redevelopment Authority, the Franklin County Community Development Corporation, Community Action of Pioneer Valley, Greenfield Savings Bank, Greenfield Co-operative Bank, EPA New England, and the Massachusetts Department of Environmental Protection (MassDEP). The Steering Committee is responsible for reviewing, approving and prioritizing sites to be included in the FRCOG Brownfields Program, based on established criteria, and providing input on clean-up and reuse planning activities and assisting with public outreach.

To undertake the implementation of environmental site assessment activities in the FRCOG Brownfields Program, the FRCOG is seeking to contract with a qualified environmental engineering firm (Contractor) that has at least two Massachusetts Licensed Site Professionals (LSP) on staff. One LSP must have a minimum of five years of experience conducting assessment and remediation activities for brownfields sites and must act as Project Manager. For sites prioritized by the Brownfields Steering Committee, the Contractor will conduct Phase I and Phase II Environmental Site Assessments (ESAs) for hazardous materials and/or petroleum impacted sites. In addition the Contractor may conduct interior hazardous building materials assessments. Finally, the Contractor will prepare two (2) Site Clean-up or Reuse Plans.

All work undertaken by the Contractor shall be in accordance with Cooperative Agreement #BF-00A01136 (included in the appendix of this RFP) between the FRCOG and the EPA and all applicable federal and state laws and requirements, including the Massachusetts Contingency Plan (MCP), M.G.L. Ch. 21E, the National Contingency Plan (NCP), CERCLA § 104(k), and all applicable federal laws and requirements include 2 CFR Part 200.

The Contractor must also comply with federal cross-cutting requirements, including but 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.

The Contractor must comply with the requirements in Cybersecurity Section (see pages 14-15 of the Cooperative Agreement). The Contractor shall utilize the practices in ASTM standard E1527-21 “*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*” (or the latest recognized ASTM standard at the time the assessment is performed), or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312).

The Contractor will develop a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12 for all applicable projects and tasks, in accordance with the most current version of “*Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance*”.

All geospatial data created by the Contractor must be consistent with the Federal Geographic Data Committee (FGDC) endorsed standards (see [www.fgdc.gov](http://www.fgdc.gov)).

Contractor must also comply with the 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. However, the Contractor must work the FRCOG and EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicates the Davis-Bacon Act applies to an activity the Contractor intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary.

Any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency (EPA) under assistance agreement #BF 00A01136 to the Franklin Regional Council of Governments. The contents of this document do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

The FRCOG will provide the Contractor with temporary signage that states that assessment activities are being funded by the EPA under a Cooperative Agreement with FRCOG. This signage must be placed in a visible location when the Contractor is on a site conducting assessment activities. The Contractor must also take a photograph of the sign in place, and email it to the FRCOG with corresponding information about the sign location and date(s) it was displayed.

Contracting for environmental engineering consulting services will be conducted in accordance with M.G.L. 30B, the Uniform Procurement Act, and Federal procurement law. Qualified Minority and Women owned environmental engineering consulting firms are encouraged to apply. The maximum contract amount available for Environmental Engineering Consulting Services is \$395,000.00 for hazardous materials and petroleum products.

## **2.0 SCHEDULE**

The environmental engineering firm selected will begin Phase I work on selected sites and will perform soil and groundwater testing on sites where the FRCOG and the municipality have secured a site access agreement. The project period will be approximately 36-42 months, but may be extended by mutual agreement of the FRCOG and the Contractor selected. The Contractor selected must be willing to have a flexible schedule given the uncertainty regarding when site access for the various sites will be secured. The Contractor selected will provide services as outlined in 3.0 Scope of Services. The Contractor must complete at least 25% of the Scope of Services within the first twelve (12) months of the contract and 45% within the first twenty-four (24) months of the contract as measured by funds expended under this Agreement.

## **3.0 SCOPE OF SERVICES**

For sites identified by the FRCOG Brownfields Steering Committee, the Contractor will be responsible for completion of environmental site assessments in compliance with applicable State and Federal Brownfields regulations. Some of the sites for inclusion in this program have been determined and others will be selected by the FRCOG Brownfields Steering Committee after the Contractor is selected and the contract awarded.

### **Task I. Complete Phase I Environmental Site Assessments**

As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), 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 E1527-21 "*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*" (or the latest recognized ASTM standard at the time the assessment is performed), 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-23-004 (or the latest available publication)). 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.

AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312. All AAI reports submitted to the EPA Project Officer 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-23-017 (or the latest available publication)). The checklist is available on the EPA's website at <https://www.epa.gov/brownfields/all-appropriate-inquiries-reporting-requirements-checklist-assessment-grant-recipients>.

## Procedures

1. The Contractor will conduct six (6) hazardous materials and/or petroleum products Phase I Environmental Site Assessments (ESAs). The sites will be selected and prioritized by the FRCOG Brownfields Steering Committee. The Contractor will complete the following tasks for Phase I ESAs:
  - a. Obtain approval for hazardous materials and/or petroleum sites from the EPA Project Officer in coordination with FRCOG staff. For petroleum sites, obtain approval and required documentation from MassDEP and then submit to EPA Project Officer for approval.
  - b. For each Phase I ESA, the Contractor will prepare a written report documenting the findings of the Phase I ESA. The Phase I report will include the *All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients* and determine whether a Phase II Environmental Site Assessment is warranted and will provide all necessary information for FRCOG staff to input site specific information into the EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES).
  - c. The Contractor will prepare six (6) Draft Phase I Environmental Site Assessment reports to be submitted for review to the FRCOG, the EPA, and the Board of Selectmen/Mayor or other municipal designee for the Town that requested the site to be assessed.
  - d. The Contractor will respond to comments received from the FRCOG, the EPA or the municipality, and will revise the draft report appropriately.
  - e. The Contractor will prepare a total of six (6) final Phase I ESA reports for submittal to the FRCOG, the EPA, the Board of Selectmen/Mayor or other municipal designee for the Town that requested the site to be assessed, and the property owner.

## Products

1. Six (6) draft hazardous materials or petroleum products Phase I ESA reports distributed by the Contractor according to the procedures described above.
2. Six (6) final hazardous materials or petroleum products Phase I ESA reports distributed by the Contractor according to the procedures described above.
3. For each of the 6 final Phase I ESA reports, the Contractor will provide the FRCOG with two (2) hard copies of each final Phase I ESA report and one (1) digital pdf copy.

### **Task II. Develop a Quality Assurance Project Plan (QAPP)**

The purpose of a QAPP is to ensure that the environmental data collected during the assessment and remediation phases will be accurate and useful for decision-making. It is important to involve stakeholders in the development of a QAPP to ensure that the plan addresses the specific needs of the project. Stakeholders may include regulatory agencies, property owners, municipal officials, developers, lenders, and concerned citizens. One (1) generic QAPP will be provided for this project and site-specific information will be included as an addenda to the QAPP.

The Contractor will develop QAPPs for all applicable projects and tasks involving environmental information operations in accordance with the most current version of *EPA Requirements for*

*Quality Assurance Project Plans*, Regional guidance documents, and national guidance documents may be helpful in meeting the requirements.

The Contractor must submit to the EPA Project Officer an approvable QAPP at least 60 days prior to the initiating of data collection or data compilation. 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.

The QAPP and its addenda are required for all brownfields projects funded by EPA. The QAPP and its addenda must be reviewed and approved by the EPA prior to the commencement of Phase II ESA activities. The EPA and FRCOG will review the QAPP annually for any required updates.

### Procedures

1. The Contractor will provide one (1) QAPP and four (4) site-specific addenda to address requirements/conditions for the selected sites. The QAPP and its addenda will support all environmental testing and data collection to be conducted during this project. The QAPP shall be prepared in accordance with applicable State and Federal regulations.
2. The Contractor will submit one copy of the QAPP and site-specific addenda to each of the following for review: the EPA Project Officer, the EPA Regional Quality Assurance Manager, the FRCOG, and the Select Board/Mayor or other designated municipal official of the municipality where the site is located.
3. The Contractor will respond to comments received from the EPA, FRCOG or the municipality, if any, and revise and resubmit the QAPP and site-specific addenda for final approval from the EPA.

### Products

1. One (1) draft Quality Assurance Project Plan with four (4) site-specific addenda.
2. For each of the one (1) final EPA-approved Quality Assurance Project Plan with four (4) EPA-approved site-specific addenda, the Contractor will provide one (1) hard copy and one (1) digital copy of each to the FRCOG.

### **Task III. Complete Four (4) Phase II Environmental Site Assessments including soil and groundwater testing, and/or Hazardous Building Materials Surveys**

Innovative site characterization techniques can result in a more streamlined and cost-effective site assessment. Strategies for incorporating innovative approaches should be described in the QAPP addenda for each site and the overall scope of work for Task III. Examples of these strategies may include, but are not limited to:

- The direct push method of soil sampling;
- Field screening tools and test kits;
- Minimizing field mobilizations;
- The use of mobile laboratories;
- Statistical models and/or 3-D models to integrate and evaluate real time data;
- An adaptive sampling and analysis program; and
- Green and sustainable site assessment measures.

The Task III scope of work submitted should specify the decision-making logic that will be used in the field to determine which compounds require analysis, where to collect the samples and when to stop sampling. Cost-effective site investigations are highly dependent on anticipating what data will be needed to support all characterization needs and to design remediation and reuse plans. In addition, the Contractor shall identify and incorporate any green and sustainable measures when conducting assessments, as appropriate, in accordance with EPA guidance to reduce any negative impacts of environmental site assessments.

#### **Procedures**

1. The Contractor will utilize the QAPP addenda to conduct a Phase II scope of work for all selected sites, pursuant to applicable State and Federal brownfields requirements, and submit them to the FRCOG and the EPA for their review and comment as follows.
  - a. The Contractor will conduct four (4) Phase II ESAs including soil and groundwater sampling and/or hazardous building materials surveys or sampling to characterize the source, extent, and migration pathways of hazardous materials or petroleum products and the risk of harm posed to the health, safety and public welfare or the environment. The Contractor will conduct the Phase II investigations in compliance with all applicable State and Federal brownfields regulations and will provide all necessary information for FRCOG staff to input site specific information into the EPA's ACRES database.
  - b. The Contractor will prepare for review and comment four (4) draft Phase II Environmental Site Assessment reports to be submitted for review by the FRCOG, the EPA, and Select Board/Mayor or other municipal designee for the Town that requested the site be assessed.
  - c. The Contractor will respond to comments received from the FRCOG, the EPA or the municipality and will revise the draft report appropriately.
  - d. The Contractor will prepare four (4) final Phase II ESA reports for submittal to the FRCOG, the EPA, the municipal government, and the property owner.

## Products

1. Completion of four (4) approved Phase II ESAs.
2. Soil and groundwater testing, and/or hazardous building materials survey testing in accordance with the requirements of the QAPP.
3. Four (4) draft Phase II ESA reports which the Contractor will distribute according to the procedures described above.
4. Four (4) final Phase II ESA reports which the Contractor will distribute according to the procedures described above.
5. Contractor will provide the FRCOG with an additional two (2) hard copies and one (1) digital pdf copy of each final Phase II report.

## **Task IV. Complete Two (2) Phase III Clean-up or Reuse Plans**

### Procedures

1. The Contractor will prepare two (2) Phase III Clean-up or Reuse Plans pursuant to the requirements and procedures described below and in compliance with applicable State and Federal Brownfields requirements and procedures. Remediation plans will identify and evaluate remedial action alternatives, which are reasonably likely to achieve a level of No Significant Risk at the selected sites and will provide a preliminary cost estimate for clean-up. For a Reuse Plan, a conceptual site design and potential reuse options reflecting site constraints will be provided as well as a preliminary cost estimate for redevelopment. The Clean-up Plan will include an Analysis of Brownfield Cleanup Alternatives (ABCA).
  - a. The Contractor will prepare for review and comment two (2) draft Phase III Clean-up or Reuse Plans, to be submitted for review by the FRCOG, the EPA, and the Select Board/Mayor or other municipal designee for the Town that requested the site to be assessed.
  - b. The Contractor will respond to comments received from the FRCOG, the EPA or the municipality, if any, and revise the draft report appropriately.
  - c. The Contractor will prepare one two (2) Phase III Clean-up or Reuse Plans pursuant to the State and Federal Brownfields requirements and procedures, and submit them to the FRCOG, the EPA, the municipality, and the property owner, as applicable.

### Products

1. Two (2) draft Phase III Clean-up or Reuse Plans distributed by the Contractor according to the procedures described above.
2. Two (2) final Phase III Clean-up or Reuse Plans distributed by the Contractor according to the procedures described above.
3. Contractor will provide the FRCOG with an additional two (2) hardcopies and one (1) digital pdf copy of each final Clean-up or Reuse Plan.

### **Task V. Public Education and Outreach Assistance**

An important component of the FRCOG Regional Brownfields Program is public education and outreach. The FRCOG will coordinate and conduct meetings with the FRCOG Brownfields Steering Committee, municipal officials, site owners, residents of impacted neighborhoods and other stakeholders throughout the course of this project. The Contractor shall assist in these public education and outreach efforts.

#### **Procedures**

1. Working with FRCOG staff, the Contractor will prepare for and attend fifteen (15) to seventeen (17) meetings with municipal officials, property owners, groups of residents of impacted neighborhoods, and/or potential developers to explain the site assessment work being conducted under this contract, to enlist support for site investigations and to gain permission for site access for Phase II ESAs, to get public input about health concerns or reuse opportunities and/or explain the results of the environmental site assessments.
2. Working with FRCOG staff, the Contractor will prepare and give presentations to two (2) or three (3) community based organization and/or Franklin Regional Planning Board meetings as requested by the FRCOG to provide information about the FRCOG Regional Brownfields Program and the results of the environmental site assessments.
3. Attend up to fourteen (14) quarterly meetings of the FRCOG Brownfield Steering Committee to report on Environmental Site Assessment activities.

#### **Products**

1. Presentation materials appropriate for the target audience and presentations by the Project Manager for up to twenty (20) meetings in total.
2. Attendance at approximately fourteen (14) quarterly FRCOG Brownfield Steering Committee meetings to provide updates on Environmental Site Assessment activities.

### **Task VI. Reporting of Activities**

The FRCOG will conduct the appropriate reporting requirements as dictated by the EPA, including using the EPA's online reporting database called Assessment, Cleanup and Redevelopment Exchange System (ACRES) for quarterly reports. The Contractor will support these efforts by maintaining an accurate record of relevant information on a per site basis. This information will be submitted as part of the quarterly reporting summarizing work conducted during that quarter organized by site (Reference "5.0 Price / Invoice Information" for more information about the quarterly reports required with submittal of an invoice). The Contractor shall accurately track all expenditures associated with each Brownfields hazardous materials or petroleum products site.

## Procedures

1. Submit to the FRCOG, within ten (10) calendar days after the end of the quarter, a narrative report pertaining to the assessment activities conducted on a per site basis to support ACRES reporting requirements. Actual input into ACRES will be conducted by FRCOG staff. For each hazardous materials or petroleum products site, budgets and invoices clearly showing expenditures shall be provided.
2. Submit to the FRCOG, within ten (10) calendar days after the end of the quarter, a quarterly report summarizing work conducted during the quarter, along with an invoice of expenditures by site, and documentation of efforts to subcontract with disadvantaged business enterprises (DBE) and any minority owned business enterprises or women owned business enterprises (MBE/WBE) participation amounts. Contractor shall be required to meet the EPA's six Good Faith Efforts whenever procuring construction, equipment, services and supplies (40 CFR, Part 22, Subpart C). In addition, to meet the Commonwealth's Disadvantaged Business Enterprise (DBE) Program provisions, the Contractor shall be required to meet the 4.2% for D/MBE and 4.5% D/WBE goals. The Contractor shall provide information for FRCOG to complete applicable federal and state reporting requirements for DBE and MBE/WBE programs.

## Products

1. Completed quarterly narrative reports describing the assessment and other activities completed for each site to allow the completion of ACRES reports.
2. Completed quarterly invoices clearly showing staff time amounts and direct costs spent on each hazardous materials or petroleum assessments site. Invoices will include copies of all receipts for travel and other direct expenses. Invoices will also document any Good Faith Efforts to procure DBE services and identify any DBE/MBE/WBE participation amounts.

## **4.0 SUBMITTAL REQUIREMENTS**

- a. All proposal submittals, evaluations and contracts shall conform to both Federal procurement laws and the Uniform Procurement Act, Massachusetts General Laws Chapter 30B. Qualified minority owned business enterprises and women owned business enterprises (MBE/WBE) contractors or Contractors using qualified MBE/WBE as subcontractors are strongly encouraged to apply.
- b. Non-Price Technical Proposal shall not refer to prices, should be concise, and must include:

I. Narrative - A brief summary of the Contractor, the Contractor's understanding of the project, and relevant knowledge/experience. Provide information on all collaborators, if more than one firm is involved. Identify if the Contractor's business is a minority owned business enterprise or women owned business enterprise (MBE/WBE) or if the Contractor will use a MBE/WBE to complete the Scope of Services and the estimated contract amount to be spent on MBE/WBE services consistent with the goals of the Commonwealth's Disadvantage Business Enterprise Program. If the Contractor's business is not a certified MBE/WBE and intends to use

subcontractors, the Contractor must describe its efforts to meet the EPA's Good Faith Efforts (40 CFR, Part 22, Subpart C).

II. Business Information - Information regarding the length of time in business and the amount of annual revenues should be provided.

III. Qualifications - A description of the Contractor's qualifications, capabilities, and organizational structure. Identification of the project team including qualifications, experience, and specific responsibilities of the Project Manager and staff assigned to the project (no more than a two-page resume for each person).

IV. Work Plan - An outline of the approach the Contractor will use to accomplish the Scope of Services, and the manner in which the Contractor will work with the FRCOG in coordinating the project. For each task, a summary table shall be provided in the Non-Price Technical Proposal showing personnel who will do the work, any subcontractor that will or may be used, and estimated staff hours for each person. Suggestions for additional work that may be beneficial to the project may be considered, provided the work is within the maximum budget.

V. Work Schedule - Submittal of a schedule indicating how tasks will be organized to complete the Scope of Services within the project timeframe.

VI. Relevant Work Experience and References - A list of relevant hazardous materials or petroleum Brownfield assessment projects completed by the Contractor must be included. At least three (3) examples of projects similar in scope and scale completed by the Contractor with a brief description including completion date, type of work, and references for at least three (3) similar projects including a contact person and telephone number.

VII. Attachments - Tax Compliance and Non-Collusion Statements, W-9, Debarment and Suspension Form, as well as the Sample Contract initialed on each page as provided in the Non-Price Technical Proposal package.

c) The Price Proposal shall contain the following information:

The maximum total budget for this project is \$395,000.00 for hazardous material and petroleum product assessments, clean-up/reuse plans, public outreach and meetings, and project coordination/reporting. The Price Proposal must include a completed and signed Price Proposal Signature Form. The Price Proposal shall contain a total fee for all services, a breakdown of all direct and indirect expenses to be charged to the project, a breakdown of the costs allocated to each work task, and the amounts to be allocated to MBE/WBE firms consistent with the Commonwealth's DBE Program goals for D/MBE and D/WBE expenditures. For each task, a summary table shall be provided in the Price Proposal showing personnel who will do the work, any subcontractor that will or may be used, estimated number of hours for each person, billing rates for each person and subcontractor, and estimated costs for direct expenses. The Price Proposal Signature Form included in this RFP (see Attachments) shall be included with the proposed budget

d) A schedule of key dates for this RFP follows.

Published in the Goods and Services Bulletin	Monday, March 4, 2024
Published in Recorder Newspaper	Monday, March 4, 2024
RFP Issued <a href="https://frcog.org/bids">https://frcog.org/bids</a>	Monday, March 4, 2024
<b>Information Session</b>	<b>Tuesday, March 19, 2024 at 10:30 a.m.</b>
<b>Deadline for submission of written questions</b>	<b>Friday, March 15, 2024 at 2:00 p.m.</b>
<b>Proposal Submission Deadline</b>	<b>Tuesday, March 26, 2024 at 2:00 p.m.</b>
Review Proposals and Select Finalist(s)	April, 2024
Interview Finalist(s) if Necessary	April, 2024
Evaluations & Recommendations Completed	April, 2024
Open Price Proposals	April, 2024
Award Contract by	April, 2024
<b>Estimated Deadline for Executing Contract</b>	<b>April, 2024</b>

e) The Non-Price Technical Proposals received will be opened in the presence of one or more witnesses and a register of all proposals will be prepared. The RFP opening shall be conducted by the FRCOG Chief Procurement Officer pursuant to M.G.L. Ch. 30B and the contents of the proposals shall be kept confidential until the evaluation process is completed. Proposals will be evaluated based on the criteria contained in Section 6.0. Responsive proposals meeting the minimum criteria will be evaluated and rated based on the evaluation criteria. Finalists may be interviewed.

The Price Proposals will be opened after evaluation of the Non-Price Technical Proposals and interviews have been completed. The contract will be awarded in writing to the responsive and responsible Contractor submitting the most advantageous proposal considering the evaluation criteria and price.

f) The FRCOG will accept complete proposals for Brownfields Environmental Engineering Services. Contractors must submit a separate sealed Non-Price Technical Proposal and a separate sealed Price Proposal plainly marked as such, and labeled "RFP 2024-2120 Brownfield Environmental Engineering Services Proposal" in the lower left corner. Contractor shall submit one (1) original, four (4) hard copies, and one (1) digital pdf copy on a flash drive of the Non-Price Technical Proposal and two (2) originals and one (1) hard copy of the Price Proposal. One copy of each must be unbound. All packages must be complete and provide all the information requested herein. Proposals that are incomplete, not properly endorsed or signed, or otherwise contrary to instructions may be rejected as non-responsive by the FRCOG Chief Procurement Officer. All proposals must be received by Laura Phelps, Chief Procurement Officer, Franklin Regional Council of Governments, 12 Olive Street, Suite 2, Greenfield, MA 01301 no later than **Tuesday, April 16, 2024 at 2:00 p.m.** If the FRCOG offices are closed at the time proposals are due because of inclement weather or another unforeseeable event, then proposals may be submitted no later than Wednesday, April 17, 2024 at 2:00 p.m. The FRCOG reserves the right to accept or reject any or all proposals in total or in part, and reserves the right to waive minor inconsistencies as they deem in the best interest of the public.

g) All proposals must contain properly executed Tax Compliance and Non-Collusion Statements, W-9, and Debarment and Suspension Form (see Attachments).

h) As the FRCOG is exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax, prices quoted with respect to this RFP are not to include these taxes.

i) A Contractor will be held to the terms and prices within the proposal for the duration of the contract if both parties sign a contract within 60 days of opening.

j) The Contractor selected will be bound by all applicable statutory provisions of the laws of the United States and the Commonwealth of Massachusetts.

k) Any restrictions, qualifications, or deviations from the services requested must appear in the proposal submitted.

l) Written questions about this RFP and its Sample Contract should be directed to Laura Phelps, Chief Procurement Officer, Franklin Regional Council of Governments, John W. Olver Transit Center, 12 Olive Street, Suite 2, Greenfield, MA preferably by email to [lphelps@frcog.org](mailto:lphelps@frcog.org)  
**The deadline for written questions is Tuesday March 26, 2024 at 2:00 p.m. Any Addenda will be disseminated to all those who downloaded the RFP from the bid website <https://frcog.org>.**  
No questions will be answered that in any way would give an unfair advantage to a bidder.

## **5.0 PRICE / INVOICE INFORMATION**

Payments for this contract will be made quarterly upon completion of satisfactory work, submission of a quarterly report summarizing work conducted during that quarter organized by site, and submission of an invoice organized by site with hours and amounts for each staff-person. Contractors are requested to provide a complete budget with a price for each task and associated products as outlined above. The contract amount will not exceed \$395,000.00 in total. Payments will be made to Contractor within two weeks from the receipt of funds by the FRCOG from the EPA.

## **6.0 CRITERIA FOR EVALUATING PROPOSALS**

### **Minimum Criteria**

- a.) Submission of a complete proposal that meets the requirements of this RFP.
- b.) The Contractor must have been in business for at least five (5) years (specifically address this criterion under “II. Business Information” in the Non-Price Technical Proposal).
- c.) The Contractor must have annual revenues of at least \$1,000,000 (specifically address this criterion under “II. Business Information” in the Non-Price Technical Proposal).
- d.) The Contractor must have on staff a Massachusetts Licensed Site Professional (LSP) who will act as Project Manager with a minimum of five (5) years of experience overseeing and supervising Brownfields assessments and clean-ups in accordance with the MCP, M.G.L. Ch. 21E, NCP, and CERCLA (specifically address this criterion under “III. Qualifications” in the Non-Price Technical Proposal).

- e.) The Contractor must have at least three (3) staff members, in addition to the Project Manager, that have qualifications and experience appropriate for this Brownfields assessment project and at least two (2) staff members including the Project Manager are LSPs (specifically address this criterion under “III. Qualifications” in the Non-Price Technical Proposal).
- f.) Contractor is “Incorporated” or is a “Limited Liability Company” with corporate status. This must be so attested in the W-9 form. Partnerships or sole proprietors are not eligible.

## **Evaluation Criteria**

Proposals will be rated using the following categories:

*Highly Advantageous* - Proposal excels on specified criteria.

*Advantageous* - Proposal meets the specified criteria.

*Not Acceptable* - Proposal fails to meet the specified criteria or does not meet Minimum Criteria.

### **a. Business Profile**

Address this criterion under “II. Business Information” in the Non-Price Technical Proposal.

**Highly Advantageous** - The Contractor has been in business ten (10) or more years and the Contractor is a Minority/Woman Owned Business Enterprise (M/WBE), or the Contractor has been in business ten (10) or more years and has included a M/WBE as a subcontractor.

**Advantageous** - The Contractor has been in business five (5) or more years but less than ten (10) years and the Contractor is a Minority/Woman Owned Business Enterprise (M/WBE), or the Contractor has been in business five (5) or more years but less than ten (10) years and has included a M/WBE as a subcontractor.

**Not Acceptable** - The Contractor has been in business less than five (5) years.

### **b. Financial Strength**

Address this criterion under “II. Business Information” in the Non-Price Technical Proposal.

**Highly Advantageous** - The Contractor has revenues equal to or greater than \$3,000,000 per year.

**Advantageous** - The Contractor has revenues equal to or greater than \$1,000,000 per year but less than \$3,000,000 per year.

**Not Acceptable** - The Contractor has revenues less than \$1,000,000 per year.

### **c. Staff Qualifications**

Address this criterion under “III. Qualifications” in the Non-Price Technical Proposal.

**Highly Advantageous** - The Contractor has identified a Project Manager who is a LSP with five (5) years of experience, and has five (5) or more additional staff members with strong qualifications and background appropriate for this project, including a second LSP.

**Advantageous** - The Contractor has identified a Project Manager who is a LSP with five (5) years of experience, and has at least three (3) additional staff members with strong qualifications and background appropriate for this project, including a second LSP.

**Not Acceptable** - The Contractor has identified a Project Manager who is a LSP with five (5) years of experience but has less than three (3) additional staff members with strong qualifications and background appropriate for this project or does not have a second LSP.

d. **Public Participation Criteria**

Address this criterion under “III. Qualifications” in the Non-Price Technical Proposal.

**Highly Advantageous** – Contractor has identified a Project Manager who has successfully implemented community outreach for three (3) or more EPA funded Brownfields Program grants or comparable public information programs for sites subject to the Massachusetts Contingency Plan. In addition, Contractor has identified a Project Manager or other senior level staff person who has experience with three (3) or more Brownfields site assessment projects located in Environmental Justice areas.

**Advantageous** - Contractor has identified a Project Manager who has successfully implemented community outreach for two (2) EPA Brownfields Program grants or comparable public information programs for sites subject to the Massachusetts Contingency Plan.

**Not Acceptable** – Contractor has identified a Project Manager who has not successfully implemented community outreach for at least two (2) EPA Brownfields Program grant or a comparable public information program for a site subject to the Massachusetts Contingency Plan.

e. **Ability to Accommodate Uncertain Timeline Dictated by Site Access Issues**

Address this criterion under “III. Qualifications” in the Non-Price Technical Proposal.

**Highly Advantageous** - Contractor has identified six (6) or more staff, including the Project Manager, who can be committed to this project, and has proposed project management and timelines that are reasonable and indicate that the work can be accomplished despite uncertainty with respect to exact timing.

**Advantageous** - Contractor has identified five (5) staff, including the Project Manager, who can be committed to this project and has proposed project management and timelines that can accommodate uncertainties in project timing.

**Not Acceptable** – Contractor has less than five (5) staff who can be committed to this project.

f. **Quality of Proposal and Study Approach**

Address this criterion under “IV. Work Plan” in the Non-Price Technical Proposal.

**Highly Advantageous** - Demonstrates a superior knowledge and understanding of accomplishing the tasks. The Non-Price Technical Proposal is well written and demonstrates an exceptional ability to communicate complex, technical information in language that is clear and easily understood. The Proposal presents a cost effective and/or innovative approach to accomplishing the tasks and completely addresses the tasks identified in the Scope of Services. Proposal incorporates green and sustainable assessment measures.

**Advantageous** - Demonstrates a satisfactory knowledge and understanding of accomplishing the tasks. The Non-Price Technical Proposal is well written and demonstrates an adequate ability to communicate complex, technical information in language that is clear and easily understood. The Proposal completely addresses the tasks identified in the Scope of Services and incorporates green and sustainable assessment measures.

**Not Acceptable** - The Non-Price Technical Proposal does not present a comprehensive understanding, approach or methodology to performing the services. The Proposal is not well written and does not demonstrate an ability to convey complex, technical information in language that is clear and easily understood or does not incorporate green and sustainable assessment measures.

g. **Number of Phase I Environmental Site Assessments Proposed for Task I**

Address this criterion under “IV. Work Plan” in the Non-Price Technical Proposal.

**Highly Advantageous** – The Contractor proposes to conduct more than six (6) Phase I Environmental Site Assessments.

**Advantageous** – The Contractor proposes to conduct six (6) Phase I Environmental Site Assessments.

**Not Acceptable** – The Contractor proposes to conduct less than six (6) Phase I Environmental Site Assessments.

h. **Number of Phase II Environmental Site Assessments Proposed for Task III**

Address this criterion under “IV. Work Plan” in the Non-Price Technical Proposal.

**Highly Advantageous** – Contractor proposes to conduct five (5) or more Phase II Environmental Site Assessments or hazardous building materials assessments.

**Advantageous** – Contractor proposes to conduct four (4) Phase II Environmental Site Assessments or hazardous building materials assessments.

**Not Acceptable** – Contractor proposes to prepare and complete less than four (4) Phase II Environmental Site Assessments or hazardous building materials assessments or less.

i. **Number of Phase III Remediation Plans Proposed for Task IV**

Address this criterion under “IV. Work Plan” in the Non-Price Technical Proposal.

**Highly Advantageous** – Contractor proposes to complete more than two (2) Phase III Remediation or Reuse Plans.

**Advantageous** – Contractor proposes to complete two (2) Phase III Remediation Plan or Reuse Plan.

**Not Acceptable** – Contractor proposes to complete less than two (2) Phase III Remediation or Reuse Plan.

j. **Experience in Conducting Environmental Assessments and Remediation**

Address this criterion under “VI. Relevant Work Experience and References” in the Non-Price Technical Proposal.

**Highly Advantageous** – Contractor has an approved EPA generic QAPP and demonstrated experience in conducting environmental site assessments and remediation according to the requirements of the EPA Brownfields Program and the Massachusetts Contingency Plan (M.G.L. Ch. 21E), NCP, and CERCLA for ten (10) or more contaminated industrial or commercial Brownfield sites containing hazardous materials and/or petroleum products.

**Advantageous** - Contractor has an approved EPA generic QAPP and demonstrated experience conducting environmental site assessments and remediation according to the requirements of the EPA Brownfield Program and the Massachusetts Contingency Plan (M.G.L. Ch. 21E), NCP, and CERCLA for five (5) to nine (9) industrial or commercial Brownfield sites involving hazardous materials and/or petroleum products.

**Not Acceptable** – Contractor has experience in developing QAPPs but no preapproved EPA generic QAPP. Contractor has some experience conducting environmental site assessments and remediation according to the requirements of the EPA Brownfield Program and the Massachusetts Contingency Plan (M.G.L. Ch. 21E), NCP, and CERCLA for less than five (5) contaminated industrial or commercial Brownfield sites containing hazardous materials and/or petroleum products.

k. **Past Work**

Address this criterion under “VI. Relevant Work Experience and References” in the Non-Price Technical Proposal.

**Highly Advantageous** – Examples of Brownfield projects completed by the Contractor are similar to the proposed Scope of Services and the work examples are outstanding. Contractor has completed work for three (3) or more EPA funded Brownfields Assessment Program grantees and references are excellent.

**Advantageous** - Examples of Brownfield projects completed by the Contractor are similar to the proposed Scope of Services and the work examples are satisfactory. Contractor has completed work for one (1) or two (2) EPA funded Brownfields Assessment Program grantees and references are good.

**Not Acceptable** - Examples of Brownfield projects completed by the Contractor are not similar to the proposed Scope of Services, the work examples are unsatisfactory, Contractor has not completed work for any EPA funded Brownfields Site Assessment grantees or references are unsatisfactory or poor.

## 1. **Interview**

The FRCOG may choose to interview proposal respondents.

**Highly Advantageous** – Contractor staff, including the Project Manager, demonstrated a thorough knowledge and understanding of accomplishing the tasks, and demonstrated a strong understanding of State and Federal Brownfields regulations. The Project Manager and staff gave an excellent oral and visual presentation, and demonstrated their ability to effectively convey complex, technical information to an audience that includes environmental professionals, municipal officials, and the general public.

**Advantageous** – Contractor staff, including the Project Manager, demonstrated an adequate knowledge and understanding of accomplishing the tasks, and demonstrated a satisfactory understanding of State and Federal Brownfields regulations. The Project Manager and staff gave a satisfactory oral and visual presentation, and demonstrated their ability to convey complex, technical information to an audience that includes environmental professionals, municipal officials, and the general public.

**Not Acceptable** – Contractor staff or the Project Manager did not demonstrate a sufficient knowledge and understanding of accomplishing the tasks, did not have a strong understanding of State and Federal regulations governing the program or did not provide a satisfactory oral and visual presentation.

## **ATTACHMENTS**

- Tax Compliance and Non-Collusion Statements
- W-9 Form
- Debarment and Suspension Form
- Price Proposal Form (submit in separate SEALED envelope)
- Sample Professional Services Agreement Contract (must be submitted with Technical Proposal initialed on each page as acceptance of terms and conditions)
- Terms and Condition of Cooperative Agreement between FRCOG and EPA

## TAX COMPLIANCE AND NON-COLLUSION STATEMENTS

Any person or corporation that fails to date, sign with original signature, and submit the following statements shall not be awarded this contract.

### Tax Compliance

Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that, to my best knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



\_\_\_\_\_  
Authorized Official's Signature

\_\_\_\_\_  
Title of Person Signing

\_\_\_\_\_  
Typed or Printed Name of Person Signing

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

## Certificate of Non-Collusion

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Date \_\_\_\_\_



\_\_\_\_\_  
Authorized Official's Signature

\_\_\_\_\_  
Typed or Printed Name of Person Signing

\_\_\_\_\_  
Company or Corporation

**Taxpayer Identification Number (TIN) and Certification W-9 Form**

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Name (as shown on your income tax return)

---

Business name, if different from above

**Check appropriate box:**  Individual/Sole proprietor

Corporation - Circle **C** Corp **S** Corp **P** Partnership **T**rust/Estate

Limited Liability Company (LLC)

Circle tax classification: **D** (disregarded entity) **S** (corporation) **C** (corporation) or **P** (partnership)

Partnership

Other .....

---

Address (number, street, and apt. or suite no.)

---

City, State, and ZIP Code

**Taxpayer Identification Number (TIN)**

Enter your TIN on the appropriate line below. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the IRS instructions on filling out Form W-9. For other entities, it is your employer identification number (EIN).

SSN: XXXXXXX do not provide on public bid document

EIN: \_\_\_\_\_

**Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: a) I am exempt from backup withholding, or b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of U.S. person  \_\_\_\_\_

Date: \_\_\_\_\_

**DEBARMENT AND SUSPENSION STATEMENT**

Any person or corporation that fails to date, sign with original signature, and submit the following statement shall not be awarded this contract.

**DEBARMENT AND SUSPENSION CERTIFICATION**

The Contractor certifies to the best of its knowledge and belief, that it and its principals:

1. Is not presently debarred, suspended, purposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. The undersigned certifies under penalties of perjury that the said undersigned is not presently debarred (Chapter 550, Acts of 1991) from doing public construction work in the Commonwealth of Massachusetts under the provisions of Section 29F of Chapter 29 of the General Laws, or any other applicable debarment provisions of any other Chapter of the General Laws, or any Rule or Regulation promulgated thereunder.

Date \_\_\_\_\_

 \_\_\_\_\_  
Authorized Official's Signature

\_\_\_\_\_  
Typed or Printed Name of Person Signing

\_\_\_\_\_  
Company or Corporation

## **PRICE PROPOSAL**

To be submitted in a SEPARATE sealed Price Proposal along with Detailed Budget as Required in RFP

**TO: The Franklin Regional Council of Governments**

The undersigned has read the Request for Proposals (RFP) and has carefully examined all specifications/evaluation criteria therein. The undersigned certifies that he/she is an authorized signer of the Price Proposal and that there are no known obstacles to prevent the execution of a contract agreement with **the Franklin Regional Council of Governments**. The undersigned acknowledges the following Addenda, if applicable, and certifies that this proposal includes consideration thereof:

Addendum No.\_\_\_\_, Date:\_\_\_\_\_, 2024

Addendum No.\_\_\_\_, Date:\_\_\_\_\_, 2024

Addendum No.\_\_\_\_, Date:\_\_\_\_\_, 2024

The undersigned agrees that if the Proposer is awarded the contract pursuant to this solicitation, it will execute the contract and provide the required evidence of insurance (see Article 9 of the attached Sample Agreement for Services) within five (5) business days of presentation of the contract by the FRCOG.

The undersigned acknowledges that **FRCOG** may accept or reject any and all proposals, or waive portions of the RFP for all proposals, if it deems it in the best interests of the public.

THE TOTAL COST FOR COMPLETION OF THIS PROJECT AS OUTLINED IN THE RFP 2024-2120 IS:

\$\_\_\_\_\_ REGIONAL BROWNFIELDS SITE ASSESSMENT PROGRAM

IN WORDS: \$\_\_\_\_\_

Authorized Signature:  \_\_\_\_\_

Proposer information:

Printed Name: \_\_\_\_\_

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number/Direct Line: \_\_\_\_\_

Email Address: \_\_\_\_\_

Title: \_\_\_\_\_

The Office of the Attorney General, Washington, DC, requires the following information on all bid proposals amounting to \$1,000.00 or more:

\_\_\_\_\_ Federal Tax ID Number (this number is regularly used by companies when filing their “EMPLOYER’S FEDERAL TAX RETURN, U.S.” Treasury Department Form 941

\*IF A CORPORATION, INCLUDE WITH YOUR BID A CORPORATE RESOLUTION LISTING ALL DULY AUTHORIZED SIGNERS ON BEHALF OF THE CORPORATION AND CHECK HERE

Partnership and Proprietorship organizational structures are not allowed for this project.



## Franklin Regional Council of Governments

### AGREEMENT FOR SERVICES

by and between

UPDATE HIGHLIGHTED AREAS AS APPROPRIATE

and the FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS

For Brownfields Assessment Services

The following provisions, together with the solicitation undertaken per MGL Ch30B will be a Request for Proposal (RFP), prepared by the Franklin Regional Council of Governments are effective as of DATE , between **Contractor Name**, having a usual place of business at **Contractor Address and Phone Number** (hereinafter referred to as the "Contractor"), and the Franklin Regional Council of Governments (FRCOG) having a usual place of business at 12 Olive Street, Suite 2, Greenfield, Massachusetts, 01301 (hereinafter referred to as the "Council").

Whereas the Council does not provide **Environmental Engineering Services** as part of their programming, and

Whereas the Council proposes to engage the Contractor to assist in the preparation and completion of the tasks outlined in Attachment A, and

Whereas this project shall be conducted in accordance with this Agreement, as more specifically amended or supplemented by Name additional documents if applicable or another Attachment, and

Whereas, this Agreement, together with **Exhibit 1** represents the entire understanding of the parties, and neither is relying upon any representation not contained herein.

Now therefore, in consideration of the mutual covenants herein contained the parties agree as follows:

#### **ARTICLE 1 - ENGAGEMENT OF THE CONTRACTOR**

The Council hereby engages the Contractor and the Contractor hereby accepts the engagement to perform services in connection with the preparation and completion of the tasks specified in the Solicitation, which is incorporated by reference and made a part hereof as expressly modified or supplemented herein.

The Contractor agrees to perform the work required under this Agreement. In performing the services under this Agreement, the Contractor shall be deemed to be an independent Contractor and not an employee of the Council.

Sole proprietors or partnerships (unincorporated) must present proof upon request that they are customarily engaged in an independently established trade, profession or business of the same nature as that involved in the service performed and must provide a certificate of insurance that includes professional, general insurance and commercial auto coverage

The Council may terminate, in writing, this Agreement for non-performance of the services required under this Agreement or upon loss of funding for the project.

Upon receipt of written notification from the Council to the Contractor that the Agreement or any portion thereof is to be terminated, the Contractor shall immediately cease operations on the work stipulated, and assemble all material that has been prepared, developed, furnished or obtained under the terms of the Agreement that may be in the possession or custody of the Contractor and shall transmit the same to the Council on or before the fifteenth (15<sup>th</sup>) day following the receipt of the written notice of termination together with his/her evaluation of the cost of the work performed. The Contractor shall be entitled to complete payment for any satisfactorily completed uncompensated work performed prior to such notice and for the cost of assembling the material to be transmitted to the Council.

The Council shall have the right to terminate this Contract without cause upon fifteen (15) days' notice to the Contractor and all preceding paragraphs herein shall be applicable to this termination.

In the event that there is a disagreement between the Contractor and the Council, the terms of this Agreement for Services shall control.

## **ARTICLE 2 - SERVICES AND RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall perform professional services in accordance with the Solicitation **Exhibit 1** and this Agreement.

The Contractor will consult with and advise the Council during the performance of the specific services. The Contractor shall dedicate the key personnel presented in their submission to provide the Scope of Services. Contractor may not change or substitute the key personnel without the prior written approval of the Council.

The Contractor shall receive prior approval from the Council for any expenditure not specifically provided for in this Agreement, which is thought to be billable. The Contractor is advised that any work performed outside the Solicitation without the prior written agreement of the Council, shall not be considered as work under this Agreement and payment for such work will not be allowed.

The Contractor will use best efforts to email or hand deliver all material to the Council not less than one (1) working day prior to the meeting at which the material is to be discussed.

The Contractor shall complete all work as specified in the Solicitation in order to receive final payment.

## **ARTICLE 3 - SCHEDULE**

The Services as required under this Agreement shall be completed by the Contractor during the period from date to date.

#### **ARTICLE 4 - RESPONSIBILITIES OF THE COUNCIL**

The Council shall make available to the Contractor copies of all available information pertinent to the project including any background information on file at Council Office.

#### **ARTICLE 5 - PAYMENTS TO THE CONTRACTOR**

For all the services to be performed under this Agreement, inclusive of any agreed upon travel and other related expenses, the Contractor shall be compensated in accordance with invoices submitted by the CONTRACTOR to the FRCOG no later than 15 days after the end of the project period. Payments will be made within 30 days after the submission of invoices.

The FRCOG prefers to pay vendors by Electronic Funds Transfer (EFT) and will require completion of an enrollment form for direct payment of invoiced amounts to the Contractors bank account with the signed contract.

Payments shall be made within two weeks of FRCOG being reimbursed from the GRANTING AGENCY.

Contractor shall invoice no later than date \_\_\_\_\_ in a lump sum – or detail quarterly, monthly, or milestone payments. Invoice should document dates of services, hours billed and rates used, and a description of services rendered. FRCOG expects the Contractor will provide his or her own professional supplies and materials. Any supplies and/or materials purchased as a direct cost to this project outside this agreement will become the property of FRCOG and must have prior approval, with documentation as back-up to the invoice. The FRCOG is not subject to sales tax. A Federal W-9 Form must be submitted with the signed contract. The form can be found at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. Payments may be delayed if the W-9 form is not submitted.

The FRCOG fiscal year ends June 30. Invoices for work at the end of the fiscal year must be received by FRCOG within 10 calendar days (July 10), even if a contract remains “open”. Due to certain funding constraints, if an invoice is not received by this deadline, payment could be jeopardized.

The total amount of payments for this project will not exceed \$395,000.00

The total amount of payments for this project will not exceed \$\_\_\_\_\_ OR the hourly rate paid will not exceed \$\_\_\_\_\_ with a total not to exceed \$\_\_\_\_\_ or the Lump Sum will be \$\_\_\_\_\_ per the Bid Submission, attached (if applicable)

**RETAINAGE:** The Council shall pay Contractor within two weeks after receipt of funds by the Council from the granting agency, the xxxx. In the event that the granting agency requires that retainage be withheld until the satisfactory completion of the project, the Contractor shall receive the amount invoiced less retainage. Upon the satisfactory completion of the project and the receipt of the retainage funds by the Council, any retainage amounts owed to the Contractor will be paid within two weeks after the receipt of funds. – *this is not typical but sometimes appropriate*

#### **ARTICLE 6 - SOURCE OF FUNDING**

The funding for the services is provided by a xxxx grant from xxxx and the CONTRACTOR agreement is wholly dependent on the availability of funds. The FRCOG reserves the right to review and monitor the

practices and recordkeeping of the Contractor and any subContractor in order to determine compliance with this Agreement or other requirements that may be included in the Grant Award.

**ARTICLE 7 - OWNERSHIP OF DOCUMENTS AND WORK PRODUCT**

The parties agree that all documents produced or created for the Council pursuant to this Agreement shall belong to the Council with all rights established thereby. All information acquired from the Council, or from others at the expense of the Council, in the performance of this Agreement shall be and remain the property of the Council. This includes but is not limited to all records, data files, computer records, work sheets, deliverable products (complete and incomplete) and all other types of information prepared or acquired by the Contractor in the performance of the Contractor's services. The Council shall own and shall have all rights to the use of the drawings, specifications, and other documents prepared by the Contractor for the completion and use of this project..

**ARTICLE 8 - SEVERABILITY & APPLICABLE LAW**

In the event that any provision of this Agreement shall be deemed invalid, unreasonable or unenforceable by any court of relevant jurisdiction, such provision shall be stricken from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement, or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Agreement. Further, should this Agreement omit any statutory or regulatory requirements which would otherwise render this Agreement illegal, then this Agreement shall be deemed amended to the minimum extent necessary to comply with said statues or regulations.

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor, and agents thereof, agree to bring any federal or state proceedings arising under this Agreement, in which either the Commonwealth or the Awarding Authority is party, in a court of competent jurisdiction in the County of Franklin, Massachusetts.

**ARTICLE 9 - INSURANCE REQUIREMENTS**

FOR ENGINEERS, ARCHITECTS, DESIGNERS, ATTORNEYS, ETC.;

The Contractor shall at all times during the Contract maintain in full force and effect the following levels of insurance. All insurance shall be by insurers and for policy limits acceptable to the Council and before commencement of work hereunder the Contractor agrees to furnish the Council certificates of insurance to the effect that such insurance has been procured and is in force

For the purpose of the Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

COVERAGES	LIMITS OF LIABILITY
Worker's Compensation	\$500,000 (including Independent Contractors and SubContractors)
Professional Liability	\$1,000,000
Commercial Automobile Liability	\$1,000,000 \ \$2,000,000 aggregate

The Franklin Regional Council of Governments shall be named as an additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement.

All policies and certificates shall contain an endorsement requiring at least thirty (30) days written notice of non-renewal, restrictive amendment, or cancellation of coverage to the COUNCIL. Compliance by the Contractor with the insurance requirements shall not relieve the Contractor from liability under the full indemnity provisions contained herein. Failure to provide insurance as established above shall be considered a breach of Contract and grounds for termination of the Contract.

#### **ARTICLE 10 – MODIFICATION, WAIVER OF CHANGE**

No modifications, waiver or change shall be made in the terms and conditions of this Agreement, except as may be mutually agreed upon in writing by all parties hereto.

#### **ARTICLE 11 – INDEMNITY**

a. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and save harmless the Council, Selectboard, and its respective duly elected or appointed officials, agents and employees (referred to collectively as “Council”) from and against all demands, claims, damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney fees) (referred to collectively as “demands”) arising out of or resulting from any work performed pursuant to this Agreement including but not limited to any negligent acts, errors, or omissions of the Contractor, any subContractor of the Contractor, or any person directly or indirectly employed by any of them, or by a defect of a product or design supplied by the Contractor or subContractor. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Council, that otherwise may exist under statute or in law or equity.

b. Contractor assumes full responsibility for relations with any subContractors employed directly or indirectly by the Contractor and the Contractor shall defend, indemnify, and save harmless the Council from all demands made against the Council by such subContractor, such subContractor’s agent or employee, or any person, as the result of such subContractor’s work performed pursuant to this Agreement including but not limited to negligent acts, errors, or omissions that arise out of, result from, or are connected with the performance of this Agreement or any subsequent Agreement and is not otherwise subject to indemnifications under subparagraph “a” above.

c. The Contractor shall defend, indemnify, and hold harmless the Council from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Contractor for work performed in connection with the work hereunder or required by state or federal law, including but not limited to **Fair Labor Standards Act and Massachusetts Prevailing Wage Law**.

d. The indemnification obligations of the Contractor and subContractor shall not be limited in any way by any limitations on the amount or type of damages, compensations, or benefits payable by or for the Contractor or subContractor under any federal or state law.

e. In the event of a breach of this Agreement by the Contractor, the Contractor shall pay the Council all reasonable attorney fees, costs and other litigation expenses incurred by the Council in enforcing its rights as a result of said breach in addition to any damages for said breach.

The Contractor will indemnify and hold the Council, its officials, agents, servants and employees harmless from and against any and all liability including suits, actions, legal proceedings, claims, demands, costs, expenses, and attorney fees for damage to persons or property of any kind whatsoever arising out of any and all activities to be conducted by the Contractor pursuant to this Agreement.

By entering into this Agreement the FRCOG has not waived any governmental immunity or limitation of damages which may be extended to them by operation of law.

#### **ARTICLE 12 - CRIMINAL OFFENDER RECORD CHECKS -**

Certain Contractors who may be working directly with minors may be subject to provisions of 105 CMR 950 Criminal Offender Record Checks.

#### **ARTICLE 13 – SUCCESSORS AND ASSIGNS**

The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without prior written consent of the Council. No subcontract may be awarded by the Contractor, the purpose of which is to fulfill in whole or in part the services required herein, without said written consent of the Council. Nothing herein shall be construed to prevent an assignor's due performance of its entire obligation. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the parties hereto

#### **ARTICLE 14 - CONFLICT OF INTEREST**

No officer, employee, agent, or member of the Council or the Contractor shall participate in any decision or service relating to this Agreement, which affects the personal interest of such officer, employee, agent, or member of the Council or the Contractor, whether such interest is direct or indirect. The Council and the Contractor shall take all reasonable actions necessary to ensure that their officers, employees, agents, and members of their governing bodies are aware of the requirements, and comply with the provisions of Massachusetts General Laws, Chapter 268A, the so-called Conflict of Interest Law.

#### **ARTICLE 15 – ROYALTIES, LICENSE FEES, AND PATENTS- INTENTIONALLY LEFT BLANK**

#### **ARTICLE 16 – CONFIDENTIALITY STATEMENT**

Contractors are advised that all written documents are subject to the Commonwealth of Massachusetts Public Records Law G.L. c. 4 § 7.

#### **ARTICLE 17 – NONDISCRIMINATION**

The Contractor shall not discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service or any other protected class under the law.

**ARTICLE 18 – RIGHTS AND REMEDIES**

The Council’s rights and remedies provided in this Agreement are in addition to any other rights and remedies provided by law.

**ARTICLE 19 – ACCESS TO RECORDS**

Contractor will make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Agreement available at all reasonable times for inspection, review and audit by the Council or its authorized representative.

**ARTICLE 20 – COMPLIANCE WITH THE LAW**

The Contractor shall conduct operations under this Agreement in compliance with all applicable laws, regulations, rules, by-laws and codes of the local, state and federal government such provisions being incorporated herein by reference, provided however, the General Specifications shall govern the obligations of the Contractor where there exists conflicting ordinances on the subject. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

**ARTICLE 21 – FORCE MAJEURE**

The Contractor shall not be liable for the failure to wholly perform his duties if such failure is caused by catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God or other similar or different contingency beyond the reasonable control of the Contractor.

**ARTICLE 22 – MARGINAL HEADINGS, PRONOUNS**

The marginal headings used in this Agreement are for convenience only and shall not be deemed to be a binding portion of this Agreement. The pronouns he, she, or it, are also used for convenience, and in the event that an improper pronoun has been used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

**ARTICLE 23 – ENTIRE UNDERSTANDING**

This Agreement, together with the attachments hereto, represents the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the dates written below.

For the FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS:

\_\_\_\_\_  
Linda Dunlavy, Executive Director  
Franklin Regional Council of Governments

Signature Date:\_\_\_\_\_

For the CONTRACTOR:

\_\_\_\_\_  
Authorized Signature / Printed Name and Title

\_\_\_\_\_  
Tax ID Number (TIN) Signature Date: \_\_\_\_\_

The Franklin Regional Council of Governments (FRCOG) does not discriminate on the basis of race, color, national origin, sex, age, disability, or gender with respect to admission to, access to, or operation of its programs, services or activities. If you would like accessibility or language accommodation, please contact the Title VI Coordinator at 413-774-3167 (voice) (MA Relay System: 800-439-2370), 413-774-3169 (fax), or [civilrights@frcog.org](mailto:civilrights@frcog.org) (e-mail).

For FRCOG Use Only

Contract Reviewed by Procurement: _____	Finance: _____	Grant Line #
_____ Initial	_____ Initial	

**EXHIBIT I**

Request for Proposals 2024-2120 for Environmental Engineering Services in Support  
Of a Regional Brownfields Site Assessment Program for Properties Impacted by  
Hazardous Materials or Petroleum Products in Franklin County, Massachusetts  
Dated \_\_\_\_\_, 2024

Non-Price Technical Proposal for Environmental Engineering Consulting Services  
Submitted by \_\_\_\_\_ dated \_\_\_\_\_,

Price Proposal for Environmental Engineering Services  
Submitted by \_\_\_\_\_ dated \_\_\_\_\_,

**ATTACHMENT:**

**FRCOG's Cooperative Agreement #BF-00A01136-0**  
**Administrative Conditions**  
**Programmatic Conditions**

**EPA General Terms and Conditions, Effective October 1, 2022**

## **Administrative Conditions**

### **National Administrative Terms and Conditions**

#### **General Terms and Conditions**

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-1-2022-or-later>.

These terms and conditions are in addition to 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>.

#### **A. Correspondence Condition**

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov)

MBE/WBE reports (EPA Form 5700-52A): Grants Specialist on Page 1 of Award Document AND Larry Wells, Disadvantaged Business Utilization Program Manager: [r1\\_mbewbereport@epa.gov](mailto:r1_mbewbereport@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: Grants Specialist and Project Officer on Page 1 of Award Document

Payment requests (if applicable): Grants Specialist and Project Officer on Page 1 of Award Document

Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Project Officer on Page 1 of Award Document AND [R1QAPPs@epa.gov](mailto:R1QAPPs@epa.gov)

## **Programmatic Conditions**

# **FY23 Brownfields Community-wide Assessment Cooperative Agreement Terms and Conditions**

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Assessment 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 application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2023 competition for Brownfield Assessment 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 activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.
3. 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), applicable federal laws and requirements include 2 CFR Part 200.
4. 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. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.

5. 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. However, the recipient must contact the EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary.

## II. SITE ELIGIBILITY REQUIREMENTS

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

### A. Eligible Brownfield Site Determinations

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 CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, and/or has defenses to CERCLA liability.

2. 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.

### 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 or investigating 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 or investigating the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.3. 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.

### **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 18 months and 30 months from the date of award. 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 18 months is indicated when:

at least 25% of funds have been drawn down and disbursed for eligible activities;  
a Qualified Environmental Professional(s) has been procured;  
sites are prioritized or an inventory has been initiated (unless site prioritization or an inventory was completed prior to award);  
community engagement activities have been initiated; and/or  
other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

Sufficient progress at 30 months is indicated when:

at least 45% of funds have been drawn down and disbursed for eligible activities;  
assessments on at least two sites have been initiated; and/or  
other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

## **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 for site assessment. 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 assess 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.

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

f. 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.

- g. 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.
- h. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate. This may include reviewing requests for proposals, invitations for bid, scopes of work and/or plans and specifications for contracts over \$250,000 prior to advertising for bids.
- i. 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.)
- j. Reviewing information in performance reports to ensure all costs incurred by the CAR 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. – e. 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 assessments are protective of human health and the environment and comply with all applicable federal and state laws.

- c. The CAR and its subrecipients remain responsible for 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.

Consistent with the FY23 Community-wide Assessment Grant Guidelines, criteria for selecting additional sites must at least consider whether the site is located within an underserved community<sup>[1]</sup> in addition to considering the prioritization criteria identified in the FY23 application, the workplan, or developed during implementation of the workplan. Note, 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 application.

2. The CAR is responsible for ensuring that funding received under this cooperative agreement does not exceed the statutory \$200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be submitted to the EPA Project Officer and approved 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.

CARs expending funding from a Community-wide Assessment cooperative agreement must include this amount in any total funding expended on the site.

3. If the CAR's workplan includes eligible planning activities to prepare a brownfield site for reuse (see <https://www.epa.gov/brownfields/information-eligible-planning-activities> for eligible planning activities), the CAR must demonstrate meaningful community engagement in the reuse planning of brownfields assessed under the grant. Meaningful community engagement is demonstrated by actively including local nonprofit organizations, citizen leaders, or similar local groups/entities in brownfield reuse planning.

4. 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 conduct site assessment activities vs. planning activities) and to allow the ability for work be performed concurrently at multiple sites within the defined and approved geographic boundary.

5. 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 coordinate, direct, and oversee the brownfield site assessment activities at a given site.

6. 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 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.

9. 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 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. 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 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.)

The CAR shall refer to and utilize the Quarterly Reporting function within the

Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports unless approval is obtained from the EPA Project Officer to use an alternate format for reports.

2. The CAR must submit performance reports on a quarterly basis in ACRES using the Assessment Quarterly Report function. Quarterly performance reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Assessment 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 the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- e. A list of the properties where assessment and/or planning activities were performed and/or completed during the reporting quarter.
- f. 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); program income generated and used (if applicable) (i.e., 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., participant support costs, 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. The CAR shall include a statement on funding transfers<sup>[2]</sup> among direct budget categories or programs, functions and activities that occurred during the quarter and cumulatively during the period of performance.

g. For local governments that are using cooperative agreement funds 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 assessment 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. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess the specific properties under this cooperative agreement.

4. In accordance with 2 CFR § 200.329(e)(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 (e.g., assessments started, reuse planning activities started) and any final accomplishments (e.g., assessments completed, clean up required, contaminants found, 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.

## **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.

## **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

### **A. 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 sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites; conduct outreach and community engagement; and for reasonable participant support costs associated with one community liaison per target area identified in the selected FY23 application. 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 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. 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. Preparing a Community Involvement Plan which includes reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.

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. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment of the site. [Funds 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*.]

g. 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 § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out community engagement pertaining to the assessment activities.

**2. 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 is 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.

**3.** Under CERCLA § 104(k)(5)(E), 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 the

CAR under this agreement is **\$25,000**. 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 shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. 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 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 § 200.328;

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 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.

4. If authorized in the EPA approved scope of work and budget narrative, the CAR may use a portion of the Assessment Grant for eligible participant support costs associated with one community liaison per target area who is not an employee of the CAR or the CAR's contractor(s) or subrecipient(s). Additional target areas cannot be added to the project for the purpose of using participant support costs to fund additional community liaisons. Eligible participant support costs may include reasonable stipends to compensate an individual community member's time and travel costs for participating in project-related meetings (e.g., meetings with the community, meetings held by a brownfields advisory board, etc.) and time associated with other specific tasks that are directly tied to related community engagement efforts. Stipends may only be paid for actual time spent working on tasks associated with the project and must not duplicate support provided through other Federal, state, tribal, or local programs.

A CAR that uses participant support costs must follow the process described in their EPA-approved workplan (or in a separate process approved by EPA post-award) for determining the amounts of allowable stipend(s), procedures for accounting for participant support cost payments (including receipts), and documenting that the costs are allowable and do not duplicate other support for the individual(s). Additional information on these requirements for the use of participant support costs is available in [EPA's Guidance on Participant Support Costs](#).

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

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

- a. Cleanup activities;
- b. Site development activities that are not brownfield site assessment activities (e.g., marketing of property (activities or products created specifically to attract buyers or investors) or construction of a new facility);
- 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 or sites to be assessed. 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 site(s). This nexus must be clearly described in the workplan for the project;
- d. Job training activities 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 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.

## **V. ASSESSMENT 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 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.

2. If funds from this cooperative agreement are used to prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program

document, the CAR must 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 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.

## **B. Quality Assurance (QA) Requirements**

1. When environmental data are collected as part of the brownfield assessment, 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.
2. 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 60 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 data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The recipient will develop Quality Assurance Project Plans (QAPP) for all applicable projects and tasks involving environmental information operations in accordance with the most current version of [EPA Requirements for Quality Assurance Project Plans](#), [Regional guidance documents](#), and [national guidance documents](#) may be helpful in meeting the requirements.

QAPPs are submitted electronically to the following:

EPA Project Officer (see page 1 of assistance agreement for contact information)  
and;

Regional Quality Assurance Branch via **R1QAPPs@epa.gov**.

3. 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.

4. 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 (the QAM or EPA Project Officer may add additional specifications).

**5. 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. 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 Franklin Regional COG received financial support from the EPA under an Assistance Agreement per the term and condition described in Section V.C.1.a. above. More information is available at <https://www.epa.gov/stylebook/using-epa-seal-and-logo>.

c. 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 a 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>. To obtain the appropriate EPA logo or seal graphic file, the CAR should send a request directly to EPA's Office of Public Affairs (OPA) and include the EPA Project Officer in the communication. Instructions for contacting OPA are available at <https://www.epa.gov/aboutepa/using-epa-seal-and-logo>.

2. 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.

3. 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.

4. 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.

#### 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 E1527-21 "*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*" (or the latest recognized ASTM standard at the time the assessment is performed), 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-23-004 (or the latest available publication)). 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 the EPA Project Officer 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-23-017 (or the latest available publication)) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA's website at <https://www.epa.gov/brownfields/all-appropriate-inquiries-reporting-requirements-checklist-assessment-grant-recipients>. 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 40 CFR § 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/my” or “We/our.”**

d. In compliance with 40 CFR § 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 1527-21 or the latest recognized ASTM standard at the time the assessment is performed). 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 § 200.339. If a recipient willfully fails to correct the deficiencies EPA may consider other available remedies under 2 CFR § 200.339 and 2 CFR § 200.340.

## **E. Completion of Assessment Activities**

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

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

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative agreement 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 supported with Assessment cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.337.

2. The CAR has an ongoing obligation to advise EPA if it assessed any penalties resulting from environmental non-compliance at 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 § 200.344. 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 120 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.

a. The CAR must submit the following documentation:

i. The Final Cooperative Agreement Performance Report as described in Section III.F. of these Terms and Conditions.

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

b. 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.

c. As required by 2 CFR § 200.344, 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.

[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 described in the Executive Order, “underserved communities” may include communities denied the consistent, fair, just, and impartial treatment of all individuals such as 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.

# EPA General Terms and Conditions Effective October 1, 2022

## 1. Introduction

- (a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.339 and 200.340.
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

## 2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts [200](#) and [1500](#). 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR Part 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

**2.1. Effective Date and Incremental or Supplemental Funding.** Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 2 CFR 200.1) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR Parts 200 and 1500).

## 3. Termination

Consistent with 2 CFR 200.340, EPA may unilaterally terminate this award in whole or in part:

- a. if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or
- b. if the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:
  - (i) EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;

(ii) EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;

(iii) EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

## Financial Information

### 4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See [2 CFR 1500.9](#).

### 5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

**Electronic Payments.** Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient-specific exception;
- The assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under [31 CFR 208.4](#); or,
- The recipient is a fellowship recipient pursuant to [40 CFR Part 46](#).

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers.

To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at:

<https://www.epa.gov/financial/forms> and email it to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

US Environmental Protection Agency  
RTP-Finance Center (Mail Code AA216-01)  
4930 Page Rd.  
Durham, NC 27711

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Research Triangle Park Finance Center (RTPFC), at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or 919-541-5347, or by visiting: <https://www.fiscal.treasury.gov/asap/>.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#).

## Proper Payment Drawdown (for recipients other than states)

- a. As required by [2 CFR 200.305\(b\)](#), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- b. Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- c. If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at [2 CFR 200.305\(b\)\(8\) and \(9\)](#) regarding depositing advances of Federal funds in interest bearing accounts.
- d. Returning Funds: [Pay.gov](#) is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) to obtain complete instructions. Additional information is available at the [Pay.gov website](#): (<https://www.pay.gov/public/home>). Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>.
- e. Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under 2 CFR 200.208 and/or 2 CFR 200.339.
- f. If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#). EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

## Proper Payment Drawdown for State Recipients

In accordance with [2 CFR 200.305\(a\)](#), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at [31 CFR Part 205, Subparts A and B](#) and [Treasury Financial Manual \(TFM\) 4A-2000, "Overall Disbursing Rules for All Federal Agencies"](#) unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, [Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement](#), States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, [Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement](#), which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with [2 CFR 200.302\(a\)](#) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

## Selected Items of Cost

### 6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
  - (1) Procure or obtain, extend or renew a contract to procure or obtain;
  - (2) Enter into a contract (or extend or renew a contract) to procure; or
  - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management](#) exclusion list.

### 7. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office of Personnel Management's [Fact Sheet: How to Compute Rates of Pay](#) and [Fact Sheet: Expert and Consultant Pay](#). Specifically, to determine the maximum daily rate, follow these steps:

1. Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round \$18.845 to \$18.85).
2. Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See [2 CFR 1500.10](#).

## 8. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>.

As a pass-through entity, the recipient agrees to:

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331 and EPA's supplemental guidance in [Appendix A](#) of the [EPA Subaward Policy](#).

(a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

(b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in [2 CFR 200.1 Participant support costs](#), [2 CFR 200.1 Subaward](#), and EPA's [Guidance on Participant Support Costs](#).

(c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's [Guidance on Participant Support Costs](#).

2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in [Appendix D](#) of the [EPA Subaward Policy](#).

3. Prior to making subawards, ensure that each subrecipient has a "Unique Entity Identifier (UEI)." The UEI is required by [2 CFR Part 25](#) and [2 CFR 200.332\(a\)\(1\)](#). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: <https://www.sam.gov/SAM/> and in EPA's General Term and Condition "**System for Award Management and Universal Identifier Requirements**" of the pass-through entity's agreement with the EPA.

4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others:

- (a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
- (b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled "**Reporting Subawards and Executive Compensation.**"
- (c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"
- (d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"
- (e) The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the [Grants internet site](#) at [www.epa.gov/grants](http://www.epa.gov/grants). Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.
6. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

- (a) Results of previous audits;
- (b) Whether new or substantially changed personnel or systems, and;
- (c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(c). Examples of additional requirements authorized by 2 CFR 200.208 include:

- (a) Requiring payments as reimbursements rather than advance payments;
- (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (c) Requiring additional, more detailed financial reports;
- (d) Requiring additional project monitoring;

- (e) Requiring the non-Federal entity to obtain technical or management assistance, and
- (f) Establishing additional prior approvals.

8. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.332(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

9. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.1, *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.

10. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

11. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with [2 CFR 200.308](#).

12. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

13. Establish and follow written procedures under [2 CFR 200.302\(b\)\(7\)](#) for determining that subaward costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

14. Establish and maintain a system under [2 CFR 200.332\(d\)\(3\)](#) and [2 CFR 200.521](#) for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

## 9. 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.

## 10. Federal Employee Costs

The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

## 11. Foreign Travel

**EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs.** The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g. for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

## 12. The Fly America Act and Foreign Travel

The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

## 13. Union Organizing (Added 6/14/2023)

Grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

# Reporting and Additional Post-Award Requirements

## 14. System for Award Management and Universal Identifier Requirements

**14.1. Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain current information in the SAM. This includes information on the recipient's immediate and highest level owner and subsidiaries, as well as on all the recipient's predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

**14.2. Requirement for Unique Entity Identifier.** If the recipient is authorized to make subawards under this award, the recipient:

- a. Must notify potential subrecipients that no entity (see definition in paragraph 14.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.
- b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier.

Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

**14.3. Definitions.** For the purposes of this award term:

- a. **System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site: <https://www.sam.gov/SAM/>.
- b. **Unique Entity Identifier** means the identifier assigned by SAM to uniquely identify business entities.
- c. **Entity** includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following:
  - 14.3.c.1. A foreign organization;
  - 14.3.c.2. A foreign public entity;
  - 14.3.c.3. A domestic for-profit organization; and
  - 14.3.c.4. A domestic or foreign for-profit organization; and
  - 14.3.c.5. A Federal agency.
- d. **Subaward** is defined at 2 CFR 200.1.
- e. **Subrecipient** is defined at 2 CFR 200.1.

## 15. Reporting Subawards and Executive Compensation

### 15.1. Reporting of first-tier subawards.

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 15.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 15.5 of this award term).
- b. **Where and when to report.** (1) The recipient must report each obligating action described in paragraph 15.1.a of this award term to [www.frs.gov](http://www.frs.gov). (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)
- c. **What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.frs.gov>.

### 15.2. Reporting Total Compensation of Recipient Executives.

- a. **Applicability and what to report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:
  - 15.2.a.1. the total Federal funding authorized to date under this award is \$30,000 or more;
  - 15.2.a.2. in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - 15.2.a.3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/execomp.htm>.)
- b. **Where and when to report.** The recipient must report executive total compensation described in

paragraph 15.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at <https://www.sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

### 15.3. Reporting of Total Compensation of Subrecipient Executives.

- a. **Applicability and what to report.** Unless exempt as provided in paragraph 15.4. of this award term, for each first-tier non-Federal entity subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

15.3.a.1. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

15.3.a.2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/execomp.htm>.)

- b. **Where and when to report.** The recipient must report subrecipient executive total compensation described in paragraph 15.3.a. of this award term:

15.3.b.1. To the recipient.

15.3.b.2. By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

### 15.4. Exemptions

- a. If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

15.4.a.1. (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

### 15.5. Definitions. For purposes of this award term:

- a. **Federal agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).
- b. **Non-Federal entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; and (iv.) A domestic or foreign for-profit organization.
- c. **Executive** means officers, managing partners, or any other employees in management positions.
- d. **Subaward:**

15.5.d.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

15.5.d.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

15.5.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

- e. **Subrecipient** means a non-Federal entity or Federal agency that:

15.5.e.1. Receives a subaward from the recipient under this award; and

- 15.5.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
- f. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - 15.5.f.1. Salary and bonus.
  - 15.5.f.2. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - 15.5.f.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - 15.5.f.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - 15.5.f.5. Above-market earnings on deferred compensation which is not tax-qualified.
  - 15.5.f.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## 16. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance

### 16.1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

### 16.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
  - 16.2.c.1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - 16.2.c.2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - 16.2.c.3. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - 16.2.c.4. Any other criminal, civil, or administrative proceeding if:
    - 16.2.c.4.1. It could have led to an outcome described in paragraph 16.2.c.1, 16.2.c.2, or 16.2.c.3 of this award term and condition;
    - 16.2.c.4.2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - 16.2.c.4.3. The requirement in this award term and condition to disclose

information about the proceeding does not conflict with applicable laws and regulations.

### **16.3. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

### **16.4. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 16.1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### **16.5. Definitions**

For purposes of this award term and condition:

- a.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c.** Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - 16.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 16.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## **17. Federal Financial Reporting (FFR)**

Pursuant to 2 CFR 200.328 and 2 CFR 200.344, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award. Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: <https://www.epa.gov/financial/forms>. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

US Environmental Protection Agency  
RTP-Finance Center (Mail Code AA216-01)  
4930 Page Rd.  
Durham, NC 27703

The RTPFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any

additional forms for the closeout of the assistance agreement.

## 18. Indirect Cost Rate Agreements

This term and condition provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are [statutory or regulatory limits on IDCs](#). See also [EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements](#) (IDC Policy).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of “exempt” agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
  - Provisional;
  - Final;
  - Fixed rate with carry-forward;
  - Predetermined;
  - 10% *de minimis* rate authorized by 2 CFR 200.414(f)
  - EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy.
- “Exempt” state or local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency's fiscal year, and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term “life of the assistance agreement”, means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with 2 CFR 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

## 19. Audit Requirements

In accordance with [2 CFR 200.501\(a\)](#), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: <https://facides.census.gov/>.

For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://facweb.census.gov/>

## **20. Closeout Requirements**

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at:

<https://www.epa.gov/grants/frequent-questions-about-closeouts>

## **21. Suspension and Debarment**

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, “Responsibilities of Participants Regarding Transactions Doing Business With Other Persons,” as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled “Covered Transactions,” and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients 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.

## **22. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.**

This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A “corporation” is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The recipient may accept this award if the

EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.339 and 2 CFR 200.340, and may also pursue suspension and debarment.

## **23. Disclosing Conflict of Interests**

### **23.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost

disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

### **23.2. For awards to states including state universities that are state agencies or instrumentalities**

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.1. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

## **24. Transfer of Funds (Updated 6/14/2023)**

### **24.1. Transfer of Funds**

**Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.**

(1) As provided at 2 CFR 200.308(f), the recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.

(2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the agreement. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

### **24.2. Post-Award Changes for Continuing Environmental Program Grants**

**Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.**

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of [40 CFR §35.114\(a\)](#) or [40 CFR §35.514\(a\)](#), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at [40 CFR §35.102](#). If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under 2 CFR 200.413(c) and the General Provisions for Selected Items of Cost allowability at 2 CFR 200.420 through 200.476 as supplemented by [EPA's Guidance on Selected Items of Cost](#). The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in [2 CFR §§ 200.407](#).

## **25. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)**

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

## **26. Extension of Project/Budget Period Expiration Date**

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under [2 CFR 200.308\(e\)\(2\)](#). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing

the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

## **27. Utilization of Disadvantaged Business Enterprises**

### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

The following text either provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

#### **1. EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B**

EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).

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

Pursuant to 40 CFR Section 33.301, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: [40 CFR Section 33.301 \(a\)-\(f\)](#).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts ([40 CFR Section 33.304](#)). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

#### **3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302**

The recipient agrees to comply with the contract administration provisions of [40 CFR Section 33.302](#) (a)-(d) and (i).

#### **4. BIDDERS LIST, 40 CFR Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

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

In October 2019, a class exception to the entire Subpart D of 40 CFR, Part 33 has been authorized pursuant to the authority in 2 CFR Section 1500.3(b). Notwithstanding Subpart D of 40 CFR, Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

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

When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal

Grants and Cooperative Agreements” report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at [https://www.epa.gov/system/files/documents/2021-08/epa\\_form\\_5700\\_52a.pdf](https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf).

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, \$250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

**Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.**

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

#### **7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E**

The recipient agrees to comply with all recordkeeping requirements as stipulated in 40 CFR, Part 33, Subpart E including creating and maintaining a bidders list, when required. Any document created as a record to demonstrate compliance with any requirement of 40 CFR, Part 33 must be maintained pursuant to the requirements stated in this Subpart.

## **Programmatic General Terms and Conditions**

### **28. Sufficient Progress**

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

### **29. Copyrighted Material and Data**

In accordance with [2 CFR 200.315](#), EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as “co-regulators” or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA’s authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the

- copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

### **30. Patents and Inventions**

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at <https://www.nist.gov/iedison>. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <https://www.nist.gov/iedison>. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property “developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.”

### **31. Acknowledgement Requirements for Non-ORD Assistance Agreements**

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <https://www.nsf.gov/awards/managing/rtc.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

### **32. Electronic and Information Technology Accessibility**

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the

Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <https://www.access-board.gov/about/policy/accessibility.html>).

### 33. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

### 34. Animal Subjects

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20,1985). The nine principles can be viewed at <https://olaw.nih.gov/policies-laws/phs-policy.htm>. For additional information about the Principles, the recipient should consult the [\*Guide for the Care and Use of Laboratory Animals\*](#), prepared by the Institute of Laboratory Animal Resources, National Research Council.

## 35. Light Refreshments and/or Meals

### **APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):**

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event; and,
- (3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

### **FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:**

If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

## 36. Tangible Personal Property

- 36.1.** Reporting Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other

Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

### **36.2. Disposition**

**36.2.1 Most Recipients.** Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

**36.2.2 State Agencies.** Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

**36.2.3 Superfund Recipients.** Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

### **37. Dual Use Research of Concern (DURC)**

The recipient agrees to conduct all life science research\* in compliance with [EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern](#) (EPA DURC Order) and [United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern](#) (iDURC Policy). If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at [DURC@od.nih.gov](mailto:DURC@od.nih.gov).

\*"Life Sciences Research," for purposes of the EPA DURC Order, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

### **38. Research Misconduct**

In accordance with 2 CFR 200.329, the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:

(1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:

- A. Public health or safety is at risk.
- B. Agency resources or interests are threatened.
- C. Circumstances where research activities should be suspended.
- D. There is a reasonable indication of possible violations of civil or criminal law.
- E. Federal action is required to protect the interests of those involved in the investigation.
- F. The research entity believes that the inquiry or investigation may be made public prematurely so that

appropriate steps can be taken to safeguard evidence and protect the rights of those involved.

G. Circumstances where the research community or public should be informed. [65 FR 76263.III]

(2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

### **39. Scientific Integrity Terms and Conditions**

The recipient agrees to comply with [EPA's Scientific Integrity Policy](#) when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

#### **39.1 Scientific Products**

- 39.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines quality policy](#) and peer review policy.
- 39.1.2** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 39.1.3** Adhere to [EPA's Peer Review Handbook, 4<sup>th</sup> Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

#### **39.2 Scientific Findings**

- 39.2.1** Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.
- 39.2.2** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.
- 39.2.3** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.
- 39.2.4** Document the use of independent validation of scientific methods.
- 39.2.5** Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.
- 39.2.6** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

#### **39.3 Scientific Misconduct**

- 39.3.1** Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.
- 39.3.2** Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and

applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.

**39.3.3** Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in [EPA's Policy and Procedures for Addressing Research Misconduct](#), Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

**39.3.4** Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

#### **39.4 Additional Resources**

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7foot8>.

#### **40. Post-Award Disclosure of Current and Pending Support on Research Grants (Added 8/8/2023)**

The recipient is required to notify EPA if there has been a change in support for the principal investigator and/or major co-investigators listed on EPA Key Contacts Form, EPA Form 5700-54, since submission of its application or the last reporting period in the performance report. If there has been a change, the recipient must report the change within 30 calendar days to the EPA Project Officer. The information should also be included in the next due performance report. EPA may consult with the Principal Investigator and the Authorized Representative, to determine the impact of the new information on the EPA-funded research grant and, where necessary, take appropriate action.

If the recipient discovers that an investigator on an active EPA research grant failed to disclose current and pending support information or provided inaccurate information as part of the proposal submission process, it must provide the revised current and pending support information to the EPA Project Officer within 30 calendar days of the identification of the undisclosed or inaccurate current and pending support information.

### **Public Policy Requirements**

#### **41. Civil Rights Obligations**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

##### **a. Statutory Requirements**

- i. In carrying out this agreement, the recipient must comply with:
  1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against

- 3. persons with disabilities by entities receiving Federal financial assistance; and
  - 3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
  - 1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  - 1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

**b. Regulatory Requirements**

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
  - 1. For Title IX obligations, 40 C.F.R. Part 5; and
  - 2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
  - 3. For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300.
  - 4. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

**c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation**

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

**42. Drug-Free Workplace**

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 2 CFR Part 1536 Subpart B. 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 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title [2 CFR Part 1536 Subpart E](#). Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at [www.ecfr.gov/](http://www.ecfr.gov/).

#### **43. Hotel-Motel Fire Safety**

Pursuant to 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 <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

#### **44. Lobbying Restrictions**

**a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:**

- i) The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR Part 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii) 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.
- iii) 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.
- iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v) By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

**b) Applicable to assistance agreements when the amount of the award is over \$100,000:**

- i) By accepting this award, the recipient certifies, to the best of its knowledge and belief, that:

- (1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked [Standard Form -- LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
- (3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
  - ii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

#### **45. Recycled Paper**

When directed to provide paper documents, the recipient agrees to use recycled paper and double-sided printing 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.

#### **46. Resource Conservation and Recovery Act**

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.323, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

#### **47. Trafficking in Persons**

##### **a. Provisions applicable to a recipient that is a private entity.**

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
  1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

2. Procure a commercial sex act during the period of time that the award is in effect; or
  3. Use forced labor in the performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
    1. Is determined to have violated a prohibition in paragraph a of this award term; or
    2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
      - a. Associated with performance under this award; or
      - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR Part 1532.
- b. Provision applicable to a recipient other than a private entity.** EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either—
    1. Associated with performance under this award; or
    2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by EPA at 2 CFR Part 1532.
- c. Provisions applicable to any recipient.**
- i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.
  - ii. Our right to terminate unilaterally that is described in paragraph a and b:
    1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    2. Is in addition to all other remedies for noncompliance that are available to us under this award.
  - iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.
- d. Definitions.** For purposes of this award term:
- i. “Employee” means either:
    1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - iii. “Private entity”:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
2. Includes:
  - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
  - b. A for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**48. Build America, Buy America (Effective May 14, 2022 and applicable to all funding that date forward; Updated 6/14/2023)**

**a.** The recipient is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the [Infrastructure Investment and Jobs Act](#) (IIJA) (P.L. 117-58, §§70911-70917) for the types of infrastructure projects under the EPA program and activities specified in [EPA’s Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act](#). None of the funds provided under this award may be used for a project of infrastructure unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project are produced in the United States. The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds. The recipient must implement these requirements in its procurements, and these requirements must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the recipient must consult EPA’s [Build America, Buy America website](#) and the Office of Management and Budget’s (OMB) [Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

**b.** When supported by rationale provided in IIJA §70914, the recipient may submit a waiver request to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the EPA [Build America, Buy America website](#).

**c.** For questions regarding the applicability of the Build America, Buy America Act requirements to this assistance agreement or if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

**49. Required Certifications and Consequences of Fraud (Added 8/8/2023)**

Per [2 CFR 200.415\(a\)](#) Required Certifications, to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the financial reports or vouchers requesting payment under the agreement will include a certification that must be signed by an official who is authorized to legally bind the recipient which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

## **50. Reporting Waste, Fraud, and Abuse (Added 8/8/2023)**

Consistent with [2 CFR 200.113](#), the recipient and any subrecipients must report, in a timely manner, any violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award to the EPA Project Officer and the [EPA Office of Inspector General \(OIG\) Hotline](#). [The methods to contact the OIG hotline are](#) (1) online submission via the [EPA OIG Hotline Complaint Form](#); (2) email to [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov); (3) phone 1-888-546-8740; or (4) mail directed to Environmental Protection Agency, Office of Inspector General, 1200 Pennsylvania Avenue, N.W. (2410T), Washington, DC 20460.

To support awareness of the OIG hotline, recipients and/or subrecipients receiving an EPA award or subaward of \$1,000,000 or more must display EPA OIG Hotline posters in facilities where the work is performed under the grant. EPA OIG Hotline posters may be [downloaded or printed](#) or may be obtained by contacting the OIG at 1-888-546-8740. Recipients and subrecipients need not comply with this requirement if they have established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct and have provided instructions that encourage employees to make such reports.

## **51. Whistleblower Protections (Added 8/8/2023)**

This award is subject to whistleblower protections, including the protections established at 41 U.S.C. 4712 providing that an employee of the recipient or a subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a covered person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal grant or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal grant or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal grant or subaward. These covered persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Consistent with 41 U.S.C. 4712(d), the recipient and subrecipients shall inform their employees in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. 4712. Additional information about whistleblower protections, including protections for such employees may be found at the [EPA Office of Inspector General's Whistleblower Protection page](#).

## **52. Access to Records (Added 8/8/2023)**

In accordance with [2 CFR 200.337](#), EPA and the EPA Office of Inspector General (OIG) have the right to access any documents, papers, or other records, including electronic records, of the recipient and subrecipient which are pertinent to this award in order to make audits, examinations, excerpts, and transcripts. This right of access also includes timely and reasonable access to the recipient and subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as the records are retained.