PORTLAND DEVELOPMENT CORPORATION
Board Meeting

DATE: Wednesday, March 5, 2025
TIME: 12:00 PM
LOCATION: Remote via Zoom

Please click the link below to join:
https://portlandmaine-gov.zoom.us/j/84464855539?pwd=5y8MWcYv4bBaIdBykQe6ITA1YPZOZj.1
Passcode:993547
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Join via audio:
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+1 346 248 7799 US (Houston)
+1 360 209 5623 US
+1 386 347 5053 US
+1 507 473 4847 US
+1 564 217 2000 US
+1 669 444 9171 US
+1 669 900 6833 US (San Jose)
+1 689 278 1000 US
+1 719 359 4580 US
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
Webinar ID: 844 6485 5539
International numbers available: https://portlandmaine-gov.zoom.us/u/kdLdpfzxCG

AGENDA

1. President's comments.

2. Review and vote on waiver request from Avesta Housing Development Corporation for 89 Elm Street.

    a. See attached Memorandum and supporting documents to Board regarding 89 Elm Street.

3. Other Items to be discussed/brought up by Board Directors.

4. Next Regular Meeting Date: March 20, 2025

City of Portland | Housing and Economic Development Department
Gregory P. Watson, Director

MEMORANDUM

TO: President Kierston Van Soest and PDC Board Members

FROM: Nancy Martin, Business Programs Manager

CC: Gregory Watson, Director, HEDD

DATE: February 28, 2025

RE: Request from Avesta regarding changes to Brownfields subgrant and loan for 89 Elm

OVERVIEW

At the July 18, 2024, meeting of the Portland Development Corporation, the Board approved a $500,000 subgrant to Avesta Housing Development Corporation and $2,136,424 loan to Avesta 89 Elm LP, for a total of $2,636,424 in support of a 201-unit affordable housing development at 89 Elm Street. These funds are provided on a reimbursement basis, and the City cannot draw down the funds from the EPA financing portal until it submits a valid reimbursement request from the developer. In October, Avesta and Reveler had requested the City provide reimbursement based on proof of costs incurred before executing the subgrant agreement, but the City maintained its policy.

BACKGROUND

The sub-grant agreement was fully executed on November 20, 2024. (The loan agreement has not yet been executed, but a draft was circulated among the parties on January 13, 2025.) Avesta's Qualified Environmental Professional has already completed work under this sub-grant, and the General Contractor had begun placing perimeter fencing and was planning to remove asphalt in late January.

On January 20th, President Donald J. Trump issued an Executive Order titled "Unleasing American Energy" which states, inter alia, "All agencies shall immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58)..." The funding source of the City's Brownfields cleanup grant is the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL).

On January 31, City staff were unable to access the EPA financial drawdown system to access these funds. On February 3rd, City staff received an email from EPA referring to Court Order "New York et al. v. Trump, No. 25-cv-39-JJM-PAS (D.R.I.), ECF No. 50 (Jan. 31, 2025)." The grant funds reappeared in the EPA drawdown system on February 4th. The City's EPA Project Officer wrote in an email on February 19th "BIL funding will be open for the near future. However, it's still in the courts."

Avesta sent a waiver request to ask that the City provide reimbursement to Avesta once they incur cost.. Providing proof of incurred cost is a requirement of EPA. The City has generally been more stringent, requiring grantees and borrowers provide not just proof of cost incurred, but rather provide proof of payment to contractors as part of their reimbursement request to the City. Avesta is requesting the City waive this policy for both its subgrant and loan.

Avesta would also like to add its Qualified Environmental Professional (QEP) as a sub-item on the remediation budget. The overall cost will remain unchanged.

RECOMMENDATION

Staff recommends approving Avesta's request to provide reimbursement based on incurred cost for the $500,000 Brownfields remediation subgrant, with a requirement that Avesta provide copies of the checks used to pay invoices within 30 days of reimbursement from the City. Staff also recommends including a clause allowing the City to terminate the sub-grant and/or loan agreement if the funds are no longer available, or if the cooperative agreement is rescinded by the EPA, as well as an indemnification clause to protect the City from claims brought as a result of the funds no longer being available or in the event the EPA seeks to claw back any of the disbursed funds.

Staff recommends tabling Avesta's request to provide reimbursement based on incurred cost for the Brownfields remediation loan until the subgrant is nearly fully expended, at which time more information will be known about the overall project as well as the EPA funding source.

Staff recommends accepting Avesta's proposed change to include QEP oversight as a sub-item on the subgrant budget.

ATTACHMENTS:

- Waiver request from Avesta
- Fully executed subgrant agreement (see Section 25 for relevant language)
- Amended subgrant agreement budget (Exhibit 3) with Avesta's edits redlined
- Cooperative agreement BF4B00A00903 between EPA and the City of Portland

Attachment 1

Nancy Martin
Business Programs Manager
Housing and Economic Development
City of Portland
389 Congress Street
Portland, ME 04101

RE: Waiver of Proof of Payment Requirement

Dear Nancy,

Avesta Housing (Avesta) has received a Brownfields Revolving Loan Fund (RLF) subgrant in the amount of $500,000 and a RLF loan in the amount of $2,136,424 from the City of Portland (City) for support of eligible cleanup activities associated with the 89 Elm Street redevelopment project. The current executed subgrant agreement and draft loan agreement include language in Item 25 (subgrant agreement) and Items 25 & 26 (loan agreement) describing the content of the reimbursement requests that Avesta shall submit to the City for the disbursement of funds. The language as it is currently written requires that Avesta include copies of the checks that Avesta used to pay each invoice (proof of payment); as such, Avesta is required to pay all subgrant and loan-related costs up front prior to receiving the RLF fund reimbursement from the City.

Avesta is respectfully requesting a waiver of the requirement to include proof of payment in the reimbursement requests for the following reasons:

1. Proof of payment prior to reimbursement is not an U.S. EPA Brownfields requirement.
   a. Invoices for eligible incurred expenses are required to be provided in payment reimbursement requisitions, but proof of payment is not required.
   b. Language to this effect is present in the City's RLF grant Cooperative Agreement (CA).

    c. We note that although requiring proof of payment is the City's choice, based on our experiences with similar redevelopment projects, other municipal and/or regional economic development entities in Maine who provide Brownfields RLF funding do not require proof of payment prior to reimbursement.

2. Providing subgrant and loan disbursements for eligible incurred expenses in this manner will ensure a more timely reimbursement process and provide certainty that the RLF funding will be available to the project. Approval of this waiver would reduce the processing time of the project's reimbursements by at least 10 business days.
3. The 89 Elm Street redevelopment project is providing benefit to the Portland community in the form of jobs (during cleanup and construction) and new affordable housing units. The increased efficiencies and certainties will help us move this project forward.

We are not proposing any other changes to the reimbursement process as described in the agreements. Avesta is excited to get this project underway and for activities to be completed in an efficient and cost-effective manner.

We appreciate your consideration of this request. Please do not hesitate to reach out with questions or concerns.

Sincerely,

Nathaniel Howes

Nate Howes
Senior Development Officer
Avesta Housing

BROWNFIELDS CLEANUP REVOLVING LOAN FUND
SUBGRANT AGREEMENT

THIS AGREEMENT is made and entered into on this 18th day of November 2024, by and between Avesta Housing Development Corporation, a Maine nonprofit corporation with a mailing address of 307 Cumberland Avenue, Portland, ME 04101 (hereinafter referred to as "**Subgrantee**"), and the **Portland Development Corporation**, a Maine nonprofit corporation with an address of 389 Congress Street, Portland, Maine 04101 ("hereinafter referred to as "**Grantor**") and the administrator of the Brownfields Cleanup Revolving Loan Fund (BCRLF) capitalization grant from the U.S. Environmental Protection Agency ("EPA") under Agreement Number BF4B00A00903.

WITNESSETH:

WHEREAS, Grantor is authorized under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104(k)(3)(B)(ii) and the terms and conditions of Agreement Number BF00A00199-1 (a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference) to make subgrants to eligible entities and non-profit organizations from these funds ("Grant Funds"); and

WHEREAS, the Subgrantee (an eligible entity under CERCLA 104(k)(1) is a non-profit organization as defined in 31 USC 6101, Note) owns by way of fee simple title certain real property at 89 Elm Street in Portland, Maine (the "**Property**"), which property is more particularly described in Exhibit 1, attached hereto; and

WHEREAS the Subgrantee has performed "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property; and

WHEREAS, the Grantor has agreed to grant to Subgrantee certain of the Grant Funds which will be used by the Subgrantee for the remediation of the Property (the "Remediation Work"); and

WHEREAS, the Property has been determined by EPA to meet the definition of a Brownfields site as defined in §101(39) of CERCLA; and

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency ("EPA"); and

WHEREAS, the Subgrantee is not a potentially responsible party liable for contamination on the Property nor has been subject to any penalties resulting from environmental non-compliance at or on the Property;

WHEREAS, the Subgrantee is not a generator or transporter of any contamination located at the Property; and

WHEREAS, the Subgrantee is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the Subgrantee, or, to the best of its knowledge, its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible to participate in this federal program or from the receipt of these funds; and

WHEREAS, a claim has not been asserted against the Subgrantee for liability under CERCLA §107 at the Property; and

WHEREAS, the Grantor has awarded Grant Funds to the Subgrantee for a portion of the remediation of the Property, which is detailed in the budget in Exhibit 3 and attached hereto.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. Grantor agrees to grant to Subgrantee the sum of up to **$500,000** to be used by the Subgrantee for the Remediation Work (the "Project Grant Funds") at the Property, subject to the terms and conditions herein. The Subgrantee is accountable to the Grantor for using the Project Grant Funds only for eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement Number BF4B00A00903.

2. Subgrantee shall provide written authorization in the form of a resolution authorizing the Subgrantee to accept the Project Grant Funds and authorizing Subgrantee's representative to execute this Subgrant Agreement on behalf of the Subgrantee.

3. Reserved.

4. Subgrantee shall carry out the Remediation Work in accordance with CERCLA 104 (k) and otherwise comply in all respects with applicable terms and conditions of the EPA Grant Agreement Number BF4B00A00903. These requirements include, without limitation, those prohibitions on the use of Project Grant Funds found at CERCLA 104(k)(4)(B) for administrative costs, and response costs for which the Subgrantee is potentially liable at the Property under CERCLA 107. To the extent there is any conflict between the terms of this Agreement and Agreement Number BF4B00A00903, the terms of Agreement Number BF4B00A00903 shall govern.

5. Subgrantee shall retain ownership of the Property throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement.

6. The Subgrantee will comply with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200 and 1500 and all other applicable provisions of federal, state and local law.

7. The Subgrantee will provide the Grantor in a timely manner with all reports and other documents required for subgrantees or subawardees by 2 CFR 200 and 1500 as well as 40 CFR Part 30 or 40 CFR Part 31, as applicable, including clear documentation that Grant Funds were used in compliance with the terms and conditions.

8. The Subgrantee will adhere to OMB Cost Principles found at 2 CFR 200 Subpart E and 2 CFR Part 230 for Nonprofits.

9. Subgrantee shall carry out the Remediation Work in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with Grant Funds. The Subgrantee must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the remediation construction contract. In addition, the Subgrantee must maintain records verifying compliance with the Davis Bacon Act. Subgrantee will work with Grantor to ensure Grantor's Davis-Bacon requirements are met.

10. Subgrantee shall carry out the Remediation Work and any subsequent development on the Property in accordance with the City of Portland's Green Building Code set forth in Article VII of Chapter 6 of the City of Portland's Code of Ordinances.

11. The Subgrantee has provided the Grantor with a copy of the Phase I Environmental Site Assessment of the Property dated August 29, 2024, and Phase II Environmental Site Assessment of the Property dated April 24, 2023, performed according to the American Society for Testing and Materials (ASTM) standards (collectively, the "Assessment"). The Subgrantee agrees that the Project Grant Funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment shall include, but is not limited to site background, the threat posed by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.

12. In accordance with the Procurement Standards in 2 CFR Part 200 and Part 1500, the Grantor shall competitively procure and designate a Qualified Environmental Professional who shall review and approve of the proposed cleanup and coordinate the work to be performed using Project Grant Funds. The Grantor's Qualified Environmental Professional will review the Subgrantee's remedial planning, design, and engineering documents and review the cleanup activities as they are on-going to ensure that the cleanup is being completed in accordance with all local, State, and Federal requirements and is protective of human health and the environment.

13. The Subgrantee shall prepare a Community Involvement Plan ("CIP"), with the assistance and cooperation of the Grantor. The CIP shall include, where applicable, the following:

a. Copies of interviews or meetings conducted with residents and community leaders, local officials, and public interest groups.

b. Copies of news releases and other information that explains the proposed project, such releases and information to be disseminated throughout the area surrounding the affected area.

c. Procedures for the establishment of a local information repository at or near the Property that includes public information supplied by both the Subgrantee and the Grantor related to the proposed Remediation Work. The Subgrantee shall supply the Grantor with any additional information that would assist the Grantor in documenting the Remediation Work.

14. Subgrantee has prepared an Analysis of Brownfields Cleanup Alternatives (ABCA) dated August 26th, 2024. The ABCA includes 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 includes effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives also considers 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 includes an analysis of reasonable alternatives including no action. The cleanup method chosen is based on this analysis and documented in a decision document upon completion of the public comment period. The Grantor, or the Subgrantee with the Grantor's concurrence, has consulted with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information, and no modifications were required. During the Remediation Work, the Subgrantee agrees to accept advice and suggestions from the Grantor and to incorporate those suggestions or requests for revisions when appropriate and reasonable.

15. Subgrantee shall make the document available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice. During this public comment period, and consistent with the procedures detailed in the CIP, Subgrantee has organized, advertised, and hosted a public meeting to solicit feedback on the draft analysis of brownfields cleanup alternatives. Subgrantee shall document any comments received during the public meeting or at any other time during the 30-day public comment period.

16. As applicable, Subgrantee shall consult with the EPA and/or Maine Voluntary Response Action Program to evaluate if a formal modification to the analysis of brownfields cleanup alternatives document based on public comments or new information.

17. After the analysis of brownfields cleanup alternative has been finalized, the Subgrantee shall prepare a scope of work containing detailed design and construction plans and specifications for the Remediation Work including a budget and work schedule; a health and safety plan (OSHA 1910-120 - 126) and, if applicable, a quality assurance project plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances that are located at the Property and are to be removed as a part of the Remediation Work (collectively, such documents are referred to as the "Project Documents") and submit same to Grantor for approval.

18. Subgrantee shall demonstrate that they have completed a competitive bidding process for Remediation Work to be conducted with Project Grant Funds. Procurement shall follow the applicable requirements of the Federal Acquisition Regulation (FAR), CFR Title 48, Chapter 1.

19. Subgrantee has provided its "Unique Entity Identifier" (UEI). Subgrantee is 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/

20. Prior to the initiation of the Remediation Work, including any cleanup activities, the Subgrantee must provide to the Grantor copies of all of the state required remedial planning documents and the state's approval of those documents, if required, as well as evidence of enrollment in the Maine's Voluntary Remediation Action Program.

21. The Subgrantee shall establish a local information repository at or near the Property that includes public information supplied by both the Subgrantee and the Grantor related to the proposed Remediation Work. The Subgrantee shall supply the Grantor with any additional information that would assist the Grantor in documenting the Remediation Work.

22. The Subgrantee understands and agrees that all of the Project Grant Funds provided by Grantor to Subgrantee shall be used by the Subgrantee towards the cleanup and remediation of the Property identified in Exhibit 1. Subgrantee shall supply the Grantor with design and construction plans and specifications for the redevelopment of the Property and evidence of a firm commitment for a construction loan and permanent financing from an accredited lending institution.

23. Subgrantee and performance of all Remediation Work shall comply with Section 106 of the National Historic Preservation Act. Determination of "no adverse effect upon historic properties" as defined by Section 106 shall be obtained from the Maine Historic Preservation Commission by Subgrantee and supplied to Grantor.

24. The Subgrantee further understands and agrees that any and all work performed on the Property for which the Project Grant Funds are used and the receipt of any Project Grant Funds under this Agreement is conditioned upon the Subgrantee's full compliance with the terms and provisions of the Project Documents and this Agreement.

25. The Project Grant Funds shall be payable to the Subgrantee as reimbursement for eligible and allowable expenses incurred by the Subgrantee based upon actual disbursements for costs incurred for Remediation Work. No reimbursement shall be made to the Subgrantee without the written approval of the Grantor. Each reimbursement request should be accompanied by a summary memo prepared by the Subgrantee's Qualified Environmental Professional documenting the completed Remediation Work, a signed statement relative to the Remediation Work being eligible and allowable, and details regarding any discrepancies between the provided documentation (i.e., invoice amounts for costs incurred) and the requested disbursement amount. A tabulated detailed running budget of eligible tasks (including values previously reimbursed, values included in the current request, and remaining budget), properly executed lien waivers, invoices for costs incurred for Remediation Work, copies of the checks used to pay each invoice, and all appropriate documents and back up information to support the reimbursement request shall be attached to the memo. Prior to the last disbursement of the Project Grant Funds, Subgrantee shall provide a final lien waiver and any other information reasonably requested by Grantor.

26. Reimbursement requests may be submitted as draft for initial review and comment. However, the draft version should be complete and contain all the documentation described above.

27. Subgrantee agrees to keep all expenditures from the Project Grant Funds within the approved Budget. Subgrantee shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Grantor, unless Subgrantee provides an alternate source of funds to cover such coverage, in which case Grantor's approval shall not be required.

28. The Grantor may withhold up to ten (10) percent of each payment requested as a retainage until the Subgrantee has completed the Remediation Work.

29. The awarding of this Grant shall be subject to:

a. The Grantor's receipt of a property appraisal from the Subgrantee.
b. Opinion of the Subgrantee's Counsel that the Subgrantee, if a corporation, is in good standing and that all documents executed by the Subgrantee have been duly authorized and executed.
c. Written authorization in the form of a resolution, if a corporation, authorizing the Subgrantee to accept the Project Grant Funds and authorizing Subgrantee's representative to execute this Grant Agreement on behalf of the Subgrantee.
d. Evidence by the Subgrantee that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or are recorded against the Property.
e. Evidence of insurance coverage as follows: Prior to the execution of this Subgrant Agreement, the Subgrantee will procure and maintain occurrence-based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars ($1,000,000.00) per occurrence for bodily injury, death and property damage, and occurrence based Pollution Liability Insurance coverage in amounts of not less than Two Million Dollars ($2,000,000.00) naming the City of Portland as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Commercial General and Pollution Liability Insurance, the Subgrantee shall name the City as an additional insured for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. Prior to execution of this Agreement, the Subgrantee shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from the insurance provider or agent. Subgrantee shall also provide a copy of any endorsement naming the City as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Subgrantee shall be responsible for any and all deductibles and/or self-insured retentions. Subgrantee shall require the contractors and subcontractors performing the Remediation Work to comply with the requirements of this paragraph. All insurance coverage

required by this section shall remain in full force and effect during the term of this Agreement.
f. Identification of the contractor and subcontractor selected by the Subgrantee for the Remediation Work.
g. The Grantor's receipt of cleanup project cost breakdown based upon estimates and prices supplied by the Subgrantee.

The Grantor reserves the right to waive any or all requirements of this section.

30. Subgrantee shall commence work on the Remediation Work within 150 days from the date of execution of this Agreement and shall complete and perform all of the Remediation Work within 365 days in accordance with the approved Schedule of Work attached hereto and made a part hereof as Exhibit 3.

31. In the event that the Subgrantee experiences project delays which are beyond the control of the Subgrantee that result in the project timeline exceeding the limits above, Grantor shall provide reasonable extensions to the deadlines in this section, to the extent that such extensions comport with Grantor's obligations under the BCRLF.

32. All Remediation Work performed pursuant to this Agreement and with Project Grant Funds shall be performed in a good and workmanlike manner.

33. All material changes or modification to the Remediation Work, the Project Documents, and the Schedule of Work shall be approved in writing by the Grantor prior to such change or modification becoming effective. All additional costs incurred, as the result of any change orders shall be the responsibility of the Subgrantee. In the event that unforeseen conditions are discovered during the implementation of the Remediation Work, the Subgrantee reserves the right to revise the cleanup action and the Project Documents.

34. Subgrantee, at its sole cost and expense, and from sources other than Grant Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.

35. The Subgrantee shall:

a. Notify the Grantor when the Remediation Work is complete. The notice shall contain certification or documentation that the Remediation Work is complete and has been performed in accordance with the terms of this Agreement. This notice shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any, and shall be submitted to the Grantor for review and approval before it is finalized.

b. Perform all of its obligations and agreements under this Agreement, and any other agreements or instruments to which the Subgrantee is a party and which relate to the Project Grant Funds and the Remediation Work.

36. The Subgrantee agrees to protect, indemnify, defend and hold harmless, the

Grantor, its officers, administrators, agents, servants, employees and all other persons or legal entitles to whom the Grantor may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all reasonable fees, expenses and charges of attorneys and other professionals, court costs, and other reasonable fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Subgrantee as provided herein and caused in whole or in part by any act, error, or omission of the Subgrantee, its agents, servants, employees or assigns.

37. The Subgrantee shall erect a sign on the Property stating that the Remediation Work is being financed in part by EPA and/or include 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. This sign shall also provide the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Property site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising. For construction projects funded in whole or in part by the Bipartisan Infrastructure Law or Inflation Reduction Act through the U.S. Environmental Protection Agency, recipients must place a sign at construction sites that display the Investing in America emblem and identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law" or "project funded by President Biden's Inflation Reduction Act." The sign must be in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

38. If the Subgrantee sells or transfers the Property to another non-related or affiliated business, entity or corporation prior to completion of the Remediation Work as described in the Project Documents, then, in that event, the Subgrantee shall immediately repay the entire amount of Project Grant Funds advanced to Subgrantee to the Grantor. Any change in use of the property from the original agreement requires the prior written approval of the Grantor.

39. Any forbearance by the Grantor with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of Grantor's rights or privileges granted hereunder.

40. In the event of a default of any of the terms or conditions of this Agreement then, in that event, the entire amount of Project Grant Funds disbursed to Subgrantee shall become immediately due and payable without the necessity of demand from Grantor. The Subgrantee shall be deemed to be in default under this Agreement upon the occurrence of any or more of the following events (each an "Event of Default"):

a. The Subgrantee assigns this Agreement or any Project Grant Funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Grantor.

b. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.

c. The Subgrantee defaults in the performance of any term, covenant or condition to be performed hereunder and such default is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure the default, from and after receipt of written notice by certified mail, return receipt requested, from the Grantor to the Subgrantee, specifying said default, of, if such default cannot be remedied within that period and remedial effort is not commenced within that period and diligently and continuously pursued, the Grantor shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Subgrantee to the extent allowed by law.

d. Any proceeding involving the Subgrantee or the Property, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Grantor either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within sixty (60) days.

e. An order, judgment or decree is entered, without the application, approval or consent of the Grantor, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Subgrantee of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of sixty (60) days.

Upon the occurrence of any one or more of the Events of Default enumerated above, not cured within any applicable grace period, all amounts of Project Grant Funds disbursed to Subgrantee by Grantor pursuant to this Agreement shall become due and payable, without presentment, demand, protest or notice of any kind to the Grantor, all of which are hereby expressly waived by the Subgrantee. Further, in the event Subgrantee fails to comply with the provisions of this Agreement, and fails to cure such non-compliance within any applicable cure period, the Grantor shall be entitled to exercise any of its rights hereunder, maintain an action in law or in equity against Subgrantee to recover damages incurred by the Grantor from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require Subgrantee (through injunctive relief or specific performance) to comply, and cure any failure to comply, with the provisions and covenants set forth herein.

41. The Subgrantee agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with 2 CFR 200 and 1500, as applicable and generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of 3 years following the completion and close out of Agreement Number BF4B00A00903 except as follows:

a. Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.

b. All available records and supporting documents shall be made available, upon request, for inspection or audit by the Grantor or its representatives or representatives of EPA, EPA's Office of Inspector General, the Comptroller General, or other authorized representatives of the Federal Government.

42. The Subgrantee agrees to permit the Grantor or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances, upon reasonable notice and to copy therefrom any information that the Grantor desires relevant to this Agreement. The Grantor shall provide written notice to the Subgrantee prior to the execution of this provision. The Subgrantee agrees to deliver the records or have the records delivered to the Grantor or its designated representative at an address designated by such party. If the Grantor or its representative finds that the records delivered by the Subgrantee are incomplete, the Subgrantee agrees to pay the Grantor or its representative's costs to travel to the Subgrantee's office or other location where the books or records are located to audit or retrieve the complete records.

43. The Subgrantee will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Subgrantee will undertake good faith efforts in compliance with 40 CFR Part 33 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE).

44. The Subgrantee shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Grantor. The Subgrantee shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of the Grantor.

45. This Agreement is not intended to create or vest any rights in any third party or to create any third-party beneficiaries.

46. All amendments to this Agreement, and any exhibits hereto, shall be in writing and signed by both parties hereto.

47. It is expressly understood that a failure or delay on the part of the Subgrantee in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or Event of Default under this Agreement; however, the Subgrantee shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.

48. In the event that the Subgrantee is unable or unwilling to complete the Remediation Work, Subgrantee hereby grants to Grantor a temporary license to enter on, over and under the Property for the purpose of securing the Property in accordance with Agreement Number BF4B00A00903.

49. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

50. No failure of either party to exercise any power or right given it hereunder or to

insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.

51. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally, or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE GRANTOR:

Greg Watson, Assistant Secretary to the Portland Development Corporation
City of Portland
389 Congress St.
Portland, ME 04101

TO THE SUBGRANTEE:

Eric Boucher, Senior Vice President Finance and Administration
Avesta Housing Development Corporation / 89 Elm Street Apartments LLC
307 Cumberland Avenue
Portland, ME 04101

or to such other address as a party may subsequently specify in writing to the other party.

47. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.

48. Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

[remainder of page left blank intentionally—signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in the name and on behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized) as of the day and year first written above.

SUBGRANTEE:

WITNESS

AVESTA HOUSING DEVELOPMENT CORPORATION

Name

By: Eric Boucher

Its: Senior Vice President of Finance and Administration

11/18/2024
Date

11/18/2024
Date

GRANTOR:

WITNESS

PORTLAND DEVELOPMENT CORPORATION

Name

By: Greg Watson

Its: Assistant Secretary

11/20/24
Date

11/20/2024
Date

Approved as to form:

City Corporation Counsel's Office

Approved as to funds:

City Finance Director

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Exhibit 1

Evidence that the Subgrantee owns by way of **fee simple title** certain real property consisting of X acres that is part of the 89 Elm Street project in Portland, ME. (Deed)

Exhibit 2

Remediation Work scope

Exhibit 3

Budget and Schedule for Remediation Work

SHORT FORM QUITCLAIM DEED WITH COVENANT
DLN: 2013095

89 ELM STREET LLC, a Maine limited liability company, with a principal place of business in Portland, County of Cumberland, State of Maine, and **73 ELM STREET LLC**, a Maine limited liability company, with a principal place of business in Portland, County of Cumberland, State of Maine, (collectively, the "Grantor"), FOR CONSIDERATION PAID, grant to **AVESTA HOUSING DEVELOPMENT CORPORATION**, a Maine nonprofit corporation with a place of business and mailing address of 307 Cumberland Avenue, Portland, Maine 04101 (the "Grantee"), with QUITCLAIM COVENANT, certain real property, together with any improvements thereon, situated in Portland, County of Cumberland and State of Maine, and more particularly described as follows:

A certain lot or parcel of land, with the improvements thereon situated on the northeasterly sideline of Elm Street, the southeasterly sideline of Lancaster Street East and the northwesterly side of Oxford Street and in the City of Portland, County of Cumberland and State of Maine as shown plan titled "West Bayside MDP: Phase 1A – 89 Elm Plat 89 Elm Street Redevelopment - Portland" by Acorn Engineering dated 8/4/2022 revised through 6/6/2024, bounded and described as follows:

Beginning at the southerly corner of land now or formerly of David B. Nowlin as described in deed book 25148, page 336 on the northwesterly sideline of Oxford Street;

Thence, S 48°38'53" W along the northwesterly sideline of said Oxford Street 144.34 feet to the northeasterly sideline of Elm Street;

Thence, N 43°45'13" W along the northeasterly sideline of said Elm Street 327.06 feet to the southeasterly sideline of Lancaster Street;

Thence, N 49°39'27" E along the southeasterly sideline of said Lancaster Street 132.79 feet;

Thence, the following courses and distances through the land of the Grantor:

S 43°45'32" E a distance of 81.45 feet;
S 46°12'59" W a distance of 26.55 feet;
S 43°45'21" E a distance of 12.90 feet;
S 46°12'32" W a distance of 39.58 feet;
S 43°44'52" E a distance of 134.07 feet;
N 46°14'28" E a distance of 48.19 feet;
S 43°45'32" E a distance of 13.38 feet;
N 46°19'02" E a distance of 31.27 feet to land now or formerly of said Nowlin;

Thence, S 42°36'35" E along land of Nowlin 83.34 feet to the point of beginning, containing 34,787 s.f. or 0.80 acres, more or less.

Bearings are referenced to City Grid.

For source of Grantor's Title see Quitclaim Deed with Covenant from Bayside II, LLC to the 89 Elm Street LLC dated October 12, 2022 and recorded at the Cumberland County Registry of Deeds in Book 39779, Page 236; Quitclaim Deed with Covenant from Bayside IV, LLC to the 89 Elm Street LLC dated October 12, 2022 and recorded at the Cumberland County Registry of Deeds in Book 39779, Page 246; and Quitclaim Deed with Covenant from Bayside II, LLC to the 73 Elm Street LLC dated October 12, 2022 and recorded at the Cumberland County Registry of Deeds in Book 39779, Page 234.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by Reveler LLC, its Manager, by its Manager, John Laliberte, thereunto duly authorized, this 21st day of October, 2024.

WITNESS:

Name: Kim Gilpatrick

89 ELM STREET LLC
By: Reveler LLC, its Manager

By: ____________________
John Laliberte, its Manager

WITNESS:

Name: Kim Gilpatrick

73 ELM STREET LLC
By: Reveler LLC, its Manager

By: ____________________
John Laliberte, its Manager

State of Maine
County of Cumberland, ss.

October 21, 2024

PERSONALLY APPEARED the above-named John Laliberte, Manager of Reveler LLC, Manager of 73 Elm Street LLC and 89 Elm Street LLC, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said 73 Elm Street LLC and 89 Elm Street LLC.

Before me,

By: ____________________
Name:
Notary Public / Attorney at Law
Notary Commission Expires:

Kimberly A Gilpatrick
Notary Public - Maine
My Commission Expires
September 18, 2027

Avesta Housing - Client / Contractor Agreement

Client's Name: Avesta Housing DevelopmentCorporation	Contractor's Name: Penobscot General Contractors Inc.
Address: 307 Cumberland Avenue Portland, Maine 04101	Address: 241 US Route 1 Suite 401 Falmouth, ME 04105
Telephone Number: (207) 553-7777	Telephone Number: 20-7236-6390
☑ Capital Project ☐ Annual [Service] Agreement	Property Name: 89 Elm

THIS AGREEMENT, made this 31 day of October, 2024, between the above mentioned Client and Contractor, for the work to be done at the project(s) described on Exhibit 1 attached to and incorporated into this Agreement. Exhibit 1 sets out the scope of the work to be performed by Contractor, the date of completion of the work and the amount and timing of payments to Contractor. Client is the management agent for the owner(s) of the properties listed on Exhibit 1 (referred to in this Agreement as "Project Owner," whether one or more) and represents to Contractor that Client has received all necessary approvals and authorizations to enter into this contract on behalf of Project Owner.

Payment to Contractor under Exhibit 1 shall include all sales tax due by law. Increases or decreases in the contract price shall be approved in writing signed by the Contractor and the Client within the terms listed above.

The work will begin within 30 days of the date of this Agreement and will be completed as specified in Exhibit 1, unless delayed for reasons beyond the Contractor's control. The contract documents consist of this Agreement and the documents described in Exhibit 1 (together with this Agreement, collectively the "Contract Documents").

1. Contract Documents: The Contract Documents include all general provisions, special provisions, architectural / approved plans accepted by the Client and the Contractor. Work not covered by this Agreement will not be required unless it is required by reasonable inference as being necessary to complete the work as described above. By the execution of this Agreement, the Contractor represents that he/she has visited the site and understands local conditions, including state and local building regulations and conditions under which the work is to be performed.

The terms and agreements confirmed in this contract supersede those of the subcontractor proposal.

2. Client: Unless otherwise provided for in the Agreement, the Client will secure and pay for necessary zoning approvals (other than permits), or other actions which must precede the approval of a permit for this project. If Client fails to do so with this agreement or general provisions, the Client may order the contractor in writing to stop such work, or a part of the work until the cause for the order has been eliminated.

3. Contractor: The Contractor shall supervise and direct the work and the work of all subcontractors. He/she will use the best skill and attention and will be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified in Exhibit 1, the Contractor will provide and pay for all labor, materials, equipment, tools, machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the work. Contractor will maintain order and discipline among employees and will not assign anyone unfit for the task. Contractor will pay all sales, use and other taxes related to the work and will secure and pay for building permits and/or other permits, fees, inspections and licenses necessary for the completion of the work unless otherwise specified in the Agreement.

4. Indemnity: The Contractor will indemnify, defend and hold harmless Client, the Project Owner and their partners, members, directors, officers or stockholders from and against all claims, damages, losses, expenses, legal fees or other costs arising or resulting from Contractor's performance of the work, including, without limitation, the filing of any mechanics liens unless due to nonpayment by Client, or ordinances and orders of any public authority or inspector, and/ or lender-selected inspector bearing on the performance of the work. Contractor is responsible for and shall indemnify, defend and hold harmless the Client and Project Owner against the negligent acts and omissions of Contractor, its employees, subcontractors and their employees, or others performing the work under this Agreement. Contractor shall produce lien waivers for itself and all subcontractors upon request of Client.

5. Subcontractors: Contractor shall select all subcontractors, except that Contractor will not employ any subcontractors to whom the Client may have a reasonable objection, nor will Contractor be required by the Client to employ any subcontractor as to whom Contractor has a reasonable objection.

6. Work by the Client or other Contractor: The Client reserves the right to perform other work related to the project, but outside the scope of this Agreement, and to award separate contracts in connection with other portions of the project not detailed in this Agreement. All contractors and subcontractors will be afforded reasonable opportunity for the storage of materials and equipment by the Client and by each other. Any costs associated with defective or ill-timed work will be borne by the responsible party.

7. Binding Arbitration: Claims or disputes under the Contract Documents will be resolved under the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) unless both parties mutually agree to other methods. Before initiating arbitration, Client and Contractor shall in good faith and for a period of not less than thirty (30) days attempt to negotiate a settlement to the dispute. The notice of the demand for arbitration must be filed in writing with the other party to this Agreement and must be made in a reasonable time after the dispute has arisen. The award rendered by the arbitrator(s) will be considered final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

8. Cleanup and Trash Removal: Contractor will keep the Project Owner's property free from waste or rubbish resulting from the work. All waste, rubbish, tools, construction materials, and machinery will be removed promptly after completion of the work by the contractor. In performing the work under this Agreement, Contractor shall not unreasonably interfere with tenants' use of the property or with the Client's performance of its duties to Project Owner.

9. Time: With respect to the scheduled completion of the work, time is of the essence. If Contractor is delayed at any time in the progress of the work by agreed-upon change orders, fire, labor disputes, acts of God or other causes beyond Contractor's control, the completion schedule for this work or affected parts of the work may be extended by the same amount of time caused by the delay. Contractor must begin work no later than 30 days after receiving signed Agreement and will not cease work for more than 30 consecutive days during normal conditions.

10. Payments and Completion: Capital Improvement contracts are paid Net 30 days from receipt of invoice after the work scope has been completed by Contractor and approved by Client. Annual Maintenance contracts are paid on a monthly schedule which divides the contract into equal installments for the length of the contract. See Exhibit 1 for further payment details.

Payments may be withheld because of:

(1) Defective work not remedied within ten days of notice thereof;
(2) Failure of Contractor to make proper payments to subcontractors, workers, or suppliers;
(3) Failure to carry out work in accordance with the Contract Documents, which failure is not remedied within ten days of notice thereof, or
(4) Legal claims against Client, Project Owner or Contractor by third parties relating to the work of this Agreement not resolved within thirty (30) days;
(5) Failure of Contractor to provide Signed Agreement, W-9 or Fed ID, and COI

5% CBM NH 11/7/24

Final payment will be due at the time when all written releases, all liens wavers, and all subcontracts completed or received. A ~~10%~~ holdback may be required by the Client or lender to assure the work has been properly completed and there are no liens on the property.

11. Protection of Property and Persons: Contractor is responsible for initiating, maintaining, and supervising all necessary or required safety programs. Contractor will comply with all applicable laws, regulations, ordinances, orders or laws of federal, state, county, tribal or local governments. Contractor will indemnify the Client and the Project Owner for all property loss or damage to the Client or Project Owner caused by Contractor's employees or subcontractors. Contractor may furnish a list of all workers and subcontractors present on the site for review.

12. Insurance: Contractor will purchase and maintain such insurance necessary to protect from claims under workers compensation and from any damage to the Project Owner(s) property resulting from the conduct of this contract. At a minimum such insurance shall include statutory workers compensation coverage and general liability insurance. Contractor shall, upon request, deliver to Client Certificates of Insurance. The Contract Documents shall specify which party, if any, shall carry builder's risk insurance.

The Contractor shall obtain and maintain in force throughout the term of this Agreement on an occurrence basis form policy or policies of insurance naming the Client, the Project Owner and their partners, members, directors, officers or stockholders as additional insureds (except with respect to the insurance required under Subparagraph i. below) providing coverage for all liability arising out of the acts or omissions of such party in amounts not less than those listed below:

i. Worker's Compensation & Employers Liability
   a. Workers Compensation insurance coverage in accordance with applicable statutory requirements.
   b. Employers Liability Insurance limits of at least $500,000 each accident for bodily injury by accident and $500,000 each employee for injury by disease.

ii. Commercial General Liability (CGL) insurance covering liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury in an amount of $1,000,000 per occurrence, $2,000,000 aggregate.
   a. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
   b. Contractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and the additional insureds for at least 3 years after completion of services rendered under this agreement.
   c. Coverage provided to additional insureds shall apply as Primary and non-contributing Insurance before any other insurance maintained by, or provided to, the additional insured.

iii. Comprehensive Automobile Liability insurance extending to owned, non-owned, and hired automobiles in an amount of $1,000,000 combined single limit.
   a. CA 9948 endorsement shall be provided

iv. Umbrella Liability insurance with limits of:
   $10,000,000 General Aggregate Limit
   $10,000,000 Products/Completed Operations Limit
   $10,000,000 Personal/Advertising Injury Limit
   $10,000,000 Each Occurrence
   a. Umbrella Liability coverage shall be follow-form as respects Additional Insureds.

v. Contractors Pollution Liability insurance with limits not less than $3,000,000 Each Pollution Incident and Aggregate
   a. If coverage is provided on a claims-made basis, the retroactive date shall not be later than the date that this Agreement is signed.
   b. Coverage shall be maintained for a minimum of 3 years after project completion
   c. The policy must provide coverage for:

i. the full scope of the named insured's operations (on-going and completed) as described within the scope of Work for the Agreement
ii. loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall
iii. third party liability for bodily injury, property damage, clean up expenses, and defense arising from the Work;
iv. diminution of value and Natural Resources damages
v. contractual liability

All policies shall contain a waiver of subrogation provision in favor of Client. The Certificates of Insurance shall provide that the relevant insurance company or companies will provide the Client with at least thirty (30) days prior written notice of any material change, non-renewal or cancellation of coverage.

13. Changes in the Contract: the Client may order changes, additions or modifications without invalidating the contract. Such changes must be in writing and signed by the Client and accepted in writing by the Contractor and Lender (if applicable).

14. Correction of Deficiencies: Contractor must correct promptly any of its work or that of subcontractors found to be defective or not complying with the terms of the contract.

15. Warranty: Contractor warrants to Client and Project Owner that all materials and equipment incorporated are new and that all work done under this Agreement conforms exactly to the Contract Documents and is of good quality and free of defects or faults. For a period of one year from the completion of the work Contractor will supply all labor, equipment and materials to correct any deviations from this warranty agreement.

Nothing contained in this section shall be construed to establish a period of limitation with respect to obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 15 relates only to the specific obligation of the Contractor to correct the Work. This has no relationship to the time within the obligation to comply either with the Contract Documents that may be sought to be enforced, or to the time which proceedings may be commenced to establish that the Contractor's liability with respect to the Contractor's obligation be enforced to specifically correct Warranty Work.

16. Termination for Cause: If the Client fails to make a payment under the terms of this Agreement through no fault of Contractor, and such failure is not remedied within ten business days of written notice thereof, Contractor may terminate this Agreement. The Client will be responsible for paying contractor for all work completed and materials purchased but not yet incorporated in the work.

If Contractor fails or neglects to carry out the terms of the contract, and such failures are not remedied within ten business days of written notice thereof, the Client may terminate this Agreement. The Client may finish the job by whatever reasonable method the Client deems expedient.

17. Termination for Convenience. Either party may terminate this Agreement for convenience upon not less than thirty (30) days written notice. Contractor shall be paid for all work done and materials supplied through the date of termination.

18. Project Owner as Third Party Beneficiary: Contractor acknowledges that the work done under this Agreement is for the benefit of Project Owner. Accordingly, Contractor understands and agrees that Project Owner is an intended third party beneficiary of this Agreement and that Project Owner shall have the right to seek enforcement of the provisions of this Agreement against Contractor directly. Notwithstanding the foregoing, Contractor agrees that it shall not look to Project Owner for fulfillment of the obligations of Client under this Agreement.

AVESTA HOUSING DEVELOPMENT CORPORATION	Contractor:
	Name: Penobscot General Contractors Inc.
Signature:	Signature:
Name: Eric Boucher	Name: Clay Maker
Title: Senior Vice President of Financing and Admin	Title: Co-President
Date: October 31, 2024	Date: October 31, 2024

EXHIBIT 1

CONTRACTOR NAME: Penobscot General Contractors DATE: 10/18/2024

PROPERTY NAME: 89 Elm OWNER AHDC

PROJECT LOCATION(S) (Address): 89 Elm Street, Portland ME 04101

SCOPE OF WORK: Brownfields Site Work

CONTRACT DOCUMENTS: This Agreement and: 89 Elm Street | Early Site Work Package dated 10/17/2024

FOR CAPITAL CONTRACTS ONLY:

TOTAL AMOUNT: $ 500,000 (Maximum)

PAYMENT TERMS: Progress Payments

OTHER INFORMATION: Paid via standard requisition process, G702 provided by GC

FOR ANNUAL AND REOCCURING CONTRACTS ONLY:

SERVICE CATEGORY: Brownfields Remediation

LENGTH OF CONTRACT: 60 days

START DATE: November 1, 2024 END DATE: 12/31/2024

ANNUAL CONTRACT AMOUNT: $ 500,000

PAYMENT FREQUENCY: Monthly

PAYMENT AMOUNT: $ Determined by G702

OTHER INFORMATION: N/A

CERTIFICATE OF INSURANCE: (Required) Exhibit by PGC

W-9 FORM or FED I.D. NUMBER (Required) Exhibit by PGC

ADDITIONAL INSURANCE REQUIRMENTS: TBD

Note: Service Agreements will be paid according to Compensation Terms noted above without the Submittal of an invoice to owner. Capital Contracts will be paid within terms upon receipt of invoice.

EXHIBIT 1

PENOBSCOT

89 Elm Street| Early Sitework Package | Portland, ME

EXECUTIVE SUMMARY

[illegible]

	[illegible]	[illegible]
1	Soil Management Excavation and Stock Pile	$ 141,408
2	Mobilization and Site Security	$ $9,000
3	Project Overrun	$ 41,999
	Total	$ [illegible]

	ADD ALTERNATES | OPTIONS		[illegible]	[illegible]	[illegible]	[illegible]
1	Additional Contaminate Soil Haul off Allowance ($176 Per Ton)		$	$	$	$
2	Additional Asphalt Removal Cost $3.69 Per Sqft		$	$	$	$
3	Stockpile of Good Material Encountered on Site $81.50 Per Cubic Yard		$	$	$	$
	Total "Accepted" Alternates		$	$ -	$	$
	Updated Project Contingency	0.00%				$
	Updated Construction Management Fee	0.00%				$
	Subtotal for Alternates					$ -

TECHNICAL CLARIFICATIONS

EXHIBIT 1

Included as part of this estimate update, these Technical Clarifications are meant to provide clarity on specific assumptions, inclusions, and exclusions within this budget.

Assumptions | Inclusions:

1. Our pricing assumes normal working hours of 7am to 5pm Monday through Friday.

2. Our pricing is based off the 90% Design Documents dated September 18, 2024.

3. The budget is based on a project schedule of 4 weeks.

4. Our pricing includes removal and disposal of the asphalt parking lot and demolition of existing site structures. This scope of work will be completed, and the site will be left in a stabilized condition until additional building construction work can be started.

5. We have included a unit cost for contaminated soil disposal of $126 per ton. If soils are encountered, this will be treated as an allowance scope of work.

6. We have included a unit cost for additional asphalt removal of $5.69 per Sqft.

7. We have included a unit cost to stockpile good material encountered on site of $81.30 per cubic yard.

8. We have not included a construction contingency.

9. We have included site perimeter fencing for this work.

10. Our pricing does not include a Payment and Performance Bond.

11. Our pricing includes Union and Prevailing Wage Rates.

12. Our pricing does not include any consultant fees for third party monitoring or testing.

13. Our pricing does not include permits or fees including but not necessarily limited to local and/or state environmental permits, **Building Permit**, utility impact fees or any other impact fees (including system development), utility capacity charges, extension charges or fees, recoupment fees, local electrical extension fees, Fire Department fees, Traffic Impact fees, Minimum Capacity fees, Sewer Extension, Connection, and Capacity Reserve fees, School Impact fees, Recreational fee, and Per Unit fee.

14. We have excluded any utility connection fees including any work related to CMP. We have excluded Utility Costs from this pricing including Electrical, Water, Sewer, and Gas.

15. We have not included any special provisions or cost associated with dewatering including frac tanks or hauling ground water to a treatment facility. We assume all site water can be managed onsite.

Exhibit 3

Project Budget and Schedule for Work

Project Schedule

Environmental Programmatic Documents and Timeline/Milestones:

- **June 24, 2024 – Entry into MEEP VRAP**
- **August 26, 2024 – draft ABCA accepted by MEDEP**
- **September 6, 2025 – draft EMMP accepted by MEDEP**
- **September 10, 2024 – Public Notice of draft ABCA, EMMP and Public Meeting: start 30-day public comment period per MEDEP and USEPA requirements.**
- **September 17, 2024 – Public Meeting**
- **October 17, 2024 – End of 30-day public comment period**
- **October 18, 2024 – Summarize and consider public comments received. No changes to ABCA or EMMP**
- **October 18, 2024 - Finalize Conceptual RAP**
- **October 22, 2024 - Receipt of MEDEP VRAP NAA**

Contractor Work Timeline/Milestones:

- **November 29, 2024 – Distribution of bid documents for construction general contractor (GC).**
- **September 2023 – Penobscot General Contractors selected as GC.**
- **October 22, 2024 – End of bid period for earthwork subcontractors. Review proposals and schedule start of work based on contractor availability. Select Demo selected as earthwork subcontractor on November 8, 2024, who would contract to Penobscot General Contractors.**
- **October 28, 2024 – Avesta Housing Client/Contractor Agreement (with Penobscot General Contractors).**
- **November 1, 2024 – Site control obtained (Avesta closed on property on November 1, 2024).**
- **December 2, 2024 – Scheduled beginning of work (Asphalt removal and soil management (excavation, stockpiling, and/or off-site disposal)). Contractor contract states anticipates project schedule of 4 weeks.**
- **Activities beyond this would be funded by a separate Brownfields RLF loan. A separate schedule exhibit would be prepared for that work for that loan agreement, as necessary.**

Brownfield Subgrant Project Budget

- **Brownfields Subgrant: $500,000.00**
- **Sitework Cost Estimate: $242,000 (soil management/stockpiling/etc.)**
- **Additional Contractor Cost Estimate: $122,000 (Penobscot General Contractors – site security fencing, controls, air quality monitoring, insurances, etc.)**
- **Off-site Soil Disposal Estimate: $~~136,000~~106,000 (@ $126 per ton)**
- **TRC environmental services estimate: $30,000**

Attachment 4

U.S. ENVIRONMENTAL PROTECTION AGENCY **Cooperative Agreement**	**GRANT NUMBER (FAIN):** 00A00903 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** 4B	**DATE OF AWARD** 07/21/2022	
	TYPE OF ACTION New	**MAILING DATE** 07/26/2022	
	PAYMENT METHOD: ASAP	**ACH#** 10061	

RECIPIENT TYPE: Municipal	**Send Payment Request to:** Contact EPA RTPFC at: rtpfc-grants@epa.gov
RECIPIENT: Portland City of 389 Congress Street Portland, ME 04101 **EIN:** 01-6000032	**PAYEE:** City of Portland 389 Congress Street Portland, ME 04101

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Charles Springer 6 Ashley Drive Scarborough, ME 04074 **Email:** cspringer@trccompanies.com **Phone:** 207-274-2615	James Byrne 5 Post Office Square Boston, MA 02109 **Email:** Byrne.James@epa.gov **Phone:** 617-918-1389	Diane Culhane Grants Management Branch , MGM 05-5 5 Post Office Square Boston, MA 02109 **Email:** Culhane.Diane@epa.gov **Phone:** 617-918-1975

PROJECT TITLE AND DESCRIPTION

City of Portland's Brownfields RLF Program

See Attachment 1 for project description.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2022 - 09/30/2027	10/01/2022 - 09/30/2027	$3,000,000.00	$3,000,000.00

NOTICE OF AWARD

Based on your Application dated 07/08/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $3,000,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $3,000,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
U.S. EPA, Region 1 , EPA New England 5 Post Office Square, Suite 100 Boston, MA 02109-3912	U.S. EPA, Region 1, EPA New England R1 - Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912

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

Digital signature applied by EPA Award Official Arthur Johnson - Director of MSD Fred Weeks - Deputy Director Mission Support Division	**DATE** 07/21/2022

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$0	$3,000,000	$3,000,000
EPA In-Kind Amount	$0	$0	$0
Unexpended Prior Year Balance	$0	$0	$0
Other Federal Funds	$0	$0	$0
Recipient Contribution	$0	$0	$0
State Contribution	$0	$0	$0
Local Contribution	$0	$0	$0
Other Contribution	$0	$0	$0
Allowable Project Cost	$0	$3,000,000	$3,000,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(3) & 104(k)(5)(E) & 104(k)(10)(B)(iii) & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Oganization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	22010CG004	22	E4SD	0120AG7	000D79X89	4114	-	-	$3,000,000
									$3,000,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$0
2. Fringe Benefits	$0
3. Travel	$5,000
4. Equipment	$0
5. Supplies	$500
6. Contractual	$120,000
7. Construction	$0
8. Other	$2,874,500
9. Total Direct Charges	$3,000,000
10. Indirect Costs: 0.00 % Base	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %)	$3,000,000
12. Total Approved Assistance Amount	$3,000,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$3,000,000
15. Total EPA Amount Awarded To Date	$3,000,000

Attachment 1 - Project Description

Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This agreement will provide funding under the Infrastructure Investment and Jobs Act for the City of Portland, Maine to re-capitalize a revolving loan fund as authorized by CERCLA 104(k)(5)(A)(ii) in Portland, Maine This agreement will provide funding for the recipient to re-capitalize a revolving loan fund from which to make loans and subgrants to clean up brownfield site(s) and conduct other necessary activities to prudently manage the RLF. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to oversee the environmental site activities and will create a community involvement plan and administrative record for each site that is remediated. The recipient will report on program income, interim progress, and final accomplishments by completing and submitting relevant portions of the Property Profile Form and Brownfields RLF Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). The recipient will issue approximately 4 loans and 4 subgrants to remediate 8 brownfield site(s); anticipates holding 8 community meetings, finalizing approximately 8 Analysis of Brownfield Cleanup Alternatives, and submitting 20 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in the City of Portland, Maine. Site-specific and non-site-specific activities included: Non-site-specific tasks include, marketing the program to cities, towns, developers, and non-profits, conducting public outreach, and preparing outreach materials relevant to the City of Portland's RLF Program. Site-specific tasks include verifying site and borrower/subgrant eligibility, sub-grant agreements, conducting site-specific public relations activities, and consulting with and enrolling sites in the Maine Department of Environmental Protection's voluntary cleanup program. The The City of Portland will oversee completion of site remediation and preparation of cleanup completion documentation, including implementation of institutional controls.

Administrative Conditions

NATIONAL ADMINISTRATIVE TERMS AND CONDITIONS

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

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2021-or-later.

These terms and conditions are binding for disbursements and are in addition to or modify the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: https://www.epa.gov/grants/grant-terms-and-conditions#general.

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

·MBE/WBE reports (EPA Form 5700-52A): 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: Culhane.Diane@epa.gov, Byrne.James@epa.gov

·Workplan revisions, equipment lists, programmatic reports and deliverables: Byrne.James@epa.gov

Programmatic Conditions

FY22 Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions

Infrastructure Investment and Jobs Act Funds

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

I. GENERAL FEDERAL REQUIREMENTS

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

A. Federal Policy and Guidance

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

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

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

If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the EPA Project Officer to ensure the protectiveness of human health and the environment.

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

5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements.

6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions.

7. Refer to the General Term & Conditions for 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).

8. This is an interim term and condition for management of funding provided under the IIJA. EPA's Award Official or Grants Management Officer may amend this agreement to specify additional requirements applicable to IIJA funding as information becomes available. In the interim, the recipient agrees to have financial management and

programmatic management systems in place to:

a. Track and report on expenditures of IIJA funds.

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

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

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

A. Brownfield Site Eligibility

1. All brownfield sites that will be addressed using RLF funds (EPA funds and/or program income) must be located within the geographic area described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan). The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, or has defenses to CERCLA liability.

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

3. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

i. the State determines there is "no viable responsible party" for the site;

ii. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and

iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

i. the identity of the State program official contacted;

ii. the State official's telephone number;

iii. the date of the contact; and

iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site.

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

c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations.

B. Borrower and Subgrantee Eligibility

1. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.

2. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantees include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant. The subgrantee must consult with the CAR, who in turn must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site during the period of performance of the subgrant. Once the subgrant ends, the statutory ownership requirement is extinguished. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.

4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.

5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 50%, provided that the total amount of the

principal forgiven for that loan shall not exceed $500,000 of total award funds (EPA funds). Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site. The discounted amount in a discounted loan shall apply towards subgrants in the loan to subgrant ratio described in Section IV.B.3. (i.e., the discounted amount cannot apply towards the 50% of EPA funds that must be spent on loans and associated eligible programmatic expenses). The CAR may request a waiver of the discounted amount, discounted percentage, or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process.

6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. In addition, the borrower or subgrantee may not be affiliated with a potentially liable person as described in CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii). The CAR may rely on its own investigation which can include an opinion from the borrower's or subgrantee's counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.

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

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

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

10. An entity that is currently suspended, debarred, or otherwise declared ineligible

cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

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

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

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

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

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

d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.

e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.

f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.

g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).

h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR's, borrower's, and subgrantee's continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

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

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient

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

2. Partial termination can occur if a CAR fails to complete the initial round of lending in the time schedule provided in the cooperative agreement. In this situation, as provided at 2 CFR §§ 200.340(a)(1) and (5) or 2 CFR § 200.340(a)(3), as appropriate, the agreement may be partially terminated and the following actions may occur:

a. Unused cooperative agreement funds will be deobligated by EPA;

b. The cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement;

c. EPA may determine whether sufficient funds remain to permit effective RLF operation; or

d. EPA may terminate the agreement and recover the federal share of its assets if it determines that the purpose of the cooperative agreement cannot be met.

B. Substantial Involvement

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

a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.

b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.

c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).

d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to 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.

f. Monitoring the use of program income after the cooperative agreement project period ends.

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

a. 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.

b. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate.

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

d. Reviewing 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. – f. in Section III.B.1 in writing.

2. Effects of EPA's substantial involvement include:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.

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

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

C. Cooperative Agreement Recipient Roles and Responsibilities

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

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

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

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

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

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

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

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

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

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

c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a "unique entity identifier." This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR § 200.332(a)(1). The unique entity identifier (UEI) is generated when an entity registers in SAM. Information on registering in SAM and obtaining a UEI is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled *"System for Award Management and Universal Identifier Requirements."*

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

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

9. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under 2 CFR § 200.332(d), including the following information as part of the CAR's quarterly performance reporting:

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

b. Summaries of findings from site visits and/or desk reviews to ensure effective borrower or subgrantee performance;

c. Environmental results the borrower or subgrantee achieved;

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

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

10. 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 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.

11. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress 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 progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1^{st} quarter); January 1 – March 31 (2^{nd} quarter); April 1 – June 30 (3^{rd} quarter); and July 1 – September 30 (4^{th} quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

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 progress reports on a quarterly basis in ACRES. Quarterly progress reports must include:

a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, and related activities completed with other sources of leveraged funding.

b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.

c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.

d. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.

e. A list of the loans and/or subgrants 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; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. Program income accounting records must differentiate program income generated from interest and fees, versus program income generated from principal repayments.

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

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

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

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

b. Environmental results achieved by the borrower.

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1) the CAR agrees to inform 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. ACRES Data Submission

1. Property Profile Form: The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES.

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

F. Final Technical Cooperative Agreement 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 technical report on the cooperative agreement via email, unless the EPA Project Officer agrees to accept a paper copy of the report. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:

   a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;

   b. reasons why anticipated outputs/outcomes were not met; and

   c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

Iv. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. As provided in IIJA, no cost share is required for this agreement.

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

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

   a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).

   b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).

   c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.

   d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.

   e. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan (previously known as a Community Relations Plan) which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.

   f. Establishing an Administrative Record for each site.

   g. 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.

h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.

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

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

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

l. Borrower and subgrantee progress reporting to the CAR.

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

3. At least 50% of the total award amount (i.e., funds EPA awards directly to the CAR) must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding may be used for eligible programmatic costs, including issuing and managing subgrants to clean up eligible brownfield sites. Note: cleanup subgrants are limited to $500,000 of total award funds (EPA funds) per site. The CAR may request a waiver of the $500,000 subgrant limit or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process. However, a waiver is not required for either requirement when only program income is used, since subgrants that are funded with 100% program income are not limited in amount and do not contribute to this 50% limitation. A waiver is also not required for the discounted amount of a loan if the loan is funded with 100% program income.

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

a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and

d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

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

5. **Local Governments Only.** If authorized in the EPA-approved workplan and budget narrative, up to 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted, and the assessment indicates that the sites are contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

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

7. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the direct EPA 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 **$150,000.** 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. Note that additional administrative costs may be allowed when using program income received under this cooperative agreement (see Section IV.D.2.). Subgrantees and borrowers 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 subgrantees must classify administrative costs as direct <u>or</u> indirect consistently and shall not classify the same types of costs in both categories. [Note, borrowers cannot charge indirect costs.]

The term “administrative costs” does not include:

a. Investigation and identification of the extent of contamination of a brownfield site;

b. Design and performance of a response action; or

c. Monitoring of a natural resource.

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

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

i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;

ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;

iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;

iv. Preparing payment requests and handling payments under 2 CFR § 200.305;

v. Financial reporting under 2 CFR § 200.328;

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

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

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

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

i. Salaries, benefits, and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel), but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;

ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and

iii. Supplies and equipment not used directly for cleanup at the site.

d. Eligible <u>direct</u> costs for <u>loan administration</u> include expenses for:

i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

ii. Maintaining and operating financial management and personnel systems;

iii. Preparing payment requests and handling payments; and

iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.

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

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

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

   a. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;

   b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;

   c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property (activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);

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

   e. To pay for a penalty or fine;

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

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

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

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

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

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

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

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

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

D. Use of Program Income – During the Performance Period

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

2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.8, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g., Section IV.B.3 regarding use of 50% of the funds for loans). Accordingly, program income may be used for administrative costs, including any applicable indirect costs, provided that the total amount of funds used for administrative costs does not exceed 5% of the sum of direct EPA funding and program income the CAR generates. CARs that intend to use program income for cost share for other Brownfield Grants under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share for other Brownfield Grants. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.

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

4. In accordance with Section § 104(d)(3)(D), when a CAR transitions to a §104(k) cooperative agreement, any program income (e.g., fees, interest or principal repayments) generated prior to transition will be added to the §104(k) agreement and must be used in a manner consistent with Section § 104(k)(3) and with the Terms and Conditions, contained herein.

5. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source

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

6. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.

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

E. Interest-Bearing Accounts

1. The CAR must deposit advances of cooperative agreement funds (as described in Section VII.A., *Methods of Disbursement*) and program income (as defined earlier) in an interest-bearing account unique to this cooperative agreement [i.e., separate from post-closeout program income governed under a Closeout Agreement (COA) since separate reporting of funds is required under a COA].

2. Advances of EPA funds (and other Federal funds as well) must also be placed in interest bearing accounts as provided in 2 CFR § 200.305(b)(8) for CARs other than states which are subject to applicable Treasury regulations. Advances of EPA funds must be maintained in an account that is separate from the program income in the RLF. While interest earned by CARs on advances of EPA funds should be minimal given the regulatory and T&C requirements for prompt disbursement of drawn down funds, any interest the CAR does earn on advanced Federal funds is subject to 2 CFR § 200.305(b)(9). This regulation generally requires that interest on advanced Federal funds in excess of $500 must be transmitted annually to the U.S. Department of Health and Human Services.

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

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

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.8(c) after the end of the period of performance of the cooperative agreement, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the cooperative agreement period of performance (post-closeout program income) in accordance with terms of a COA. At the end of the cooperative agreement period of performance, the CAR shall comply with the attached COA. This award is contingent upon the CAR signing and returning the attached COA to the EPA Project Officer no later than 30 days of award. The COA goes into effect for this assistance agreement number the day after the cooperative agreement period of performance ends unless otherwise designated by EPA's Award Official or Grants Management Officer. The period of performance is identified as the project period in the Notice of Award.

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

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR, or borrower/subgrantee with CAR concurrence, shall prepare an ABCA, or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts

caused by extreme weather events (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 and documented in a decision document upon completion of the public comment period. The CAR, or borrower/subgrantee with CAR concurrence, must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.

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

B. Quality Assurance (QA) Requirements

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

All QAPPs being submitted for review shall be emailed to R1QAPPs@epa.gov and the EPA Project Officer (see page 1 of the assistance agreement).

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

2. **Competency of Organizations Generating Environmental Measurement Data:** In

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

C. Public Involvement and Community Outreach in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Involvement Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.

2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.

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

   b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with 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.

3. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the

accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

4. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

5. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

D. Administrative Record

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

E. Implementation of RLF Cleanup Activities

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

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

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanups are complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet longterm brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements sufficient to recover, as a minimum, the principal amount of the loan less any repayment discounts; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

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

a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.

b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.

d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

e. Requiring that borrowers or subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.

f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.

g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

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

1. All loans and subgrants must include the information required by 2 CFR § 200.332(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's Subaward Policy internet page. EPA does not require CARs to use the template.

2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:

a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See Section I.A.2. and Section II.)

b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.

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

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

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

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

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

CAR.

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

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

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

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

C. Default

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

a. documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and

b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

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

   a. The affected party,

   b. Any member of his immediate family,

   c. His or her partner, or

   d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subrecipient.

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

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

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

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

A. Methods of Disbursement

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

a. An 'actual expense' disbursement approach requires the borrower or subgrantee to submit documentation of the borrower's or subgrantee's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

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

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

B. Schedule for Closeout

1. There are two fundamental criteria for closeout:

a. Final payment of funds from EPA to the CAR following the end date for the cooperative agreement or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and

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

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities

funded by the cooperative agreement are complete.

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

C. Compliance with Closeout Schedule

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

D. Final Requirements

1. The CAR must submit the following documentation:

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

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

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

E. Recovery of RLF Assets

1. In case of termination, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under *Remedies for Noncompliance* at 2 CFR §§ 200.339 through 200.342

and CERCLA § 104(k) when EPA determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the EPA's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and conditions apply:

a. The CAR shall:

i. Document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;

ii. Maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and

iii. Ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k), CERCLA § 104(g) relating to compliance with the Davis-Bacon Act, and applicable federal and state laws and will protect human health and the environment.

b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower. (See Section VII.A., *Methods of Disbursement*). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the cooperative agreement as required by 2 CFR § 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 2 CFR § 200.305.

c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

i. The recipient does not retain the funds;

ii. The recipient does not have access to the escrow funds on demand;

iii. The funds remain in escrow unless there is a default of a guaranteed loan;

iv. The organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and

v. There must be an agreement with the financial institution participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrantee.

d. Federal Obligation to the Loan Guarantee Program - Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrantee.

e. Repayment of Guaranteed Loans - Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to EPA based on disposition instructions provided by the EPA Project Officer. Alternatively, the CAR may, with EPA approval:

i. Guarantee additional loans under the terms and conditions of the agreement; or

ii. Amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield sites' related activities authorized by the terms of the cooperative agreement or, if applicable, a COA.