

## PROFESSIONAL SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (Agreement) is made and entered into on this 3<sup>RD</sup> day of APRIL 2024 by and between TRINEDIA ENVIRONMENTAL AND ENGINEERING, a Qualified Environmental Professional, hereinafter referred to as "**Consultant**" or "**Contractor**", and the City of Marquette, hereinafter referred to as "**Client**", for Services, as hereinafter defined.

### WITNESSETH:

WHEREAS, **Client** is a municipality that is seeking services from **Consultant** to facilitate groundwater remediation at the former Cliffs-Dow property under a USEPA Brownfield Cleanup Grant (the Project), consistent with the terms of this Agreement, the Request for Proposals(RFP) and all Michigan Department of Energy, Great Lakes & Environment (EGLE) and the USEPA rules, regulations, criteria and requirements associated with such Agreements and the Project (all of these are collectively the Requirements);

WHEREAS, subject to the terms and conditions of this Agreement and the Requirements, **Client** agrees to pay for services performed by **Consultant** at its request when approved for payment by the USEPA in accordance with the Project and this Agreement;

WHEREAS, each party hereto represents that it is ready, willing and able to undertake the responsibilities set forth in this Agreement; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

#### 1. **Definitions**

As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

- A. **"Agreement"** means this document and the Requirements. The documents are intended to be construed consistently and as a whole, and anything that is required by one document shall be deemed to be required by all.
- B. **"Fee Schedule"** means **Consultant's** charges for professional services and reimbursable expenses.
- C. **"Services"** means those services to be performed by **Consultant** pursuant to the terms and conditions of this Agreement.
- D. **"Site"** means the Cliffs Dow site upon which Services are to be performed as designated in the Request for Proposal (RFP) published by the City.

- E. **"Work Order"** means a document or verbal agreement followed by a written document that identifies the **Client** and the Site, defines the specific scope of Services, and includes as appropriate, cost estimates, plans, drawings and **Consultant's** Fee Schedule in accordance with the RFP.

## 2. **Services to be Performed**

All Services performed under this Agreement shall be consistent with the Requirements. **Consultant**, as an independent contractor, shall furnish all necessary supervision, labor, materials, and equipment and shall perform the Services as defined in the RFP. The **Consultant's** response to the RFP, when accepted by the **Client** and approved by the U.S. Environmental Protection Agency (USEPA), shall be binding upon the parties hereto, shall incorporate by reference all the terms and conditions of this Agreement, the requirements of the RFP and shall detail the scope of Services to be performed by **Consultant**. Email communications and confirmation of agreement to revisions to the works is acceptable to confirm agreement to services

If at any time during or after completion of the Services, **Consultant** is requested or required to participate in a deposition or other legal proceeding relating to any Services or the Project which is not alleged to be the result of negligence of **Consultant**, **Client** shall reimburse **Consultant** for preparation for and participation in such deposition or legal proceeding based upon the normal hourly rates set forth in the applicable Fee Schedule.

In the event that the **Client** requests termination of the work prior to completion of a report, **Consultant** reserves the right to complete such analyses and records as are necessary to place its files in order and, where considered by it necessary to protect its professional reputation, to complete a report on the work performed to date. Any costs related to such termination activity will be borne by **Consultant** unless otherwise agreed to in writing by both the **Client** and **Consultant**. All materials prepared become the property of the **Client**. **Consultant** may retain copies of such materials for its files.

## 3. **Term of Agreement**

This Agreement shall become effective upon the above-mentioned date and, provided no default has occurred, shall continue in full force and effect. Subject to the right of **Consultant** to be paid for services actually performed during the term of this Agreement, **Client** shall have the right to terminate this Agreement at any time. Should **Client** so terminate, **Consultant** shall be entitled only to the fees earned and expenses incurred up until such termination plus reasonable close-out costs, if any. **Consultant** shall not be eligible to recover any lost profit.

#### 4. Work Order Changes

Changes in the scope of Services under a Work Order, including increases and decreases therein, must be in writing and agreed upon and accepted by each party hereto. As the services to be performed will be under a Not to Exceed or Lump Sum basis, no increases in the Project costs will be approved.

#### 5. Payment for Services

**Client** shall pay to **Consultant** as compensation for the Services the amounts set forth in the Fee Schedule attached to the Consultant's response to the RFP. There shall be no management or other administrative service fees and no markups of subcontractor services, equipment, supplies, materials or other items used by **Consultant**. **Consultant** shall provide itemized billing in accordance with the Requirements which specifically identify the identity of the person performing the service and a description of the work performed. Within forty-five (45) days of the later of the date **Consultant's** invoice is received by **Client** or the USEPA has approved payment, **Client** shall pay the full amount of such invoice; provided, however, that if **Client** objects to any portion of an invoice, **Client** shall notify **Consultant** of **Client's** objection and the grounds therefor within 20 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. **Client**, in any event, shall pay every portion of the invoice that is not in dispute within the forty-five (45) day period for payment. **Consultant** shall not change the Fee Schedule without advanced notice to and approval of **Client**.

Invoices shall be submitted \_\_\_\_\_ via email  
(\_\_\_\_\_ with a copy to \_\_\_\_\_). All invoices should reference the project name and **Client** identifying number.

#### 6. Representation

A. **Consultant** represents that the Services will be performed by it in full compliance with the USEPA Cleanup Grant requirements, in a professional manner in accordance with sound consulting practices and procedures for the time period and the geographical location of the project.

B. **Consultant** shall correct any defects in the Services that are not performed in accordance with subparagraph A of this Paragraph 6, at no additional charge to **Client**. In addition, subject to the limitations set forth in Paragraph 8, **Consultant** shall reimburse **Client** for any damages, subject to the amount stated as the limits of **Consultant's** insurance coverage as listed in Paragraph 9, arising out of **Consultant's** failure to comply with this Agreement or from **Consultant's** negligence.

#### 7. Indemnification

A. **Consultant** agrees, to the fullest extent permitted by law, to indemnify and hold the **Client** harmless from any damage, liability or cost (including reasonable

attorney fees and costs of defense) to the extent caused, in whole or in part, by **Consultant's** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of consultants, sub-consultants, contractors, sub-contractors, agents, employees or others that contract with the **Consultant** regarding this contract or anyone for whom **Consultant** is legally liable.

B. **Consultant** shall not be liable to the extent that any liability, loss, damage, cost, and expense results solely from the negligence or willful misconduct by **Client** or its directors, officers, employees, or agents.

C. **Consultant** shall not be liable to **Client** for consequential damages, including but not limited to lost profits, loss of investment, loss of product, or business interruption.

D. **Consultant** shall have the right, if it so elects, to participate at its own expense in **Client's** defense of any claim or action referred to in subparagraph A of this Paragraph 7, but such participation shall not affect **Consultant's** liability for any judgment therein, or release **Consultant** from the indemnity therein provided.

E. **Consultant** shall name **Client** as an Additional Insured on the applicable policies of insurance. Without limiting any of its obligations and liabilities, **Consultant**, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Michigan, and with forms reasonably satisfactory to the **Client**. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from the **Client**. The **Client** will consider the **Consultant's** use of a Contractors Comprehensive Insurance Policy (CCIP) for the Project

G. **Client** shall have the right, if it so elects, to participate at its own expense in **Consultant's** defense of any claim or action referred to in subparagraph E of this Paragraph 7, but such participation shall not affect **Client's** liability for any judgment therein, or release **Client** from the indemnity therein provided.

## 8. **Consultant's Liability**

A. Any claim pursuant to this Agreement must be in writing and must set forth the facts upon which it is based.

B. Subject to compliance with this Agreement, **Consultant** shall not be liable for damages resulting from cessation of services under this agreement due to: (a) health and safety issues created by inherently unsafe conditions at the Site that do not arise out of any negligent acts by **Consultant** and which could not have been foreseen by the **Consultant** prior to entering into this Agreement.

C. **Consultant** shall be responsible for clearing all utilities in connection with its services or services performed under its supervision at the Site.

## 9. Insurance

**Consultant** shall maintain for the term of this Agreement insurance policies, as applicable to the nature of **Consultant's** work, covering:

A. Worker's Compensation and Employer's Liability insurance, \$1,000,000 each occurrence and in aggregate;

B. Comprehensive General or Commercial Liability insurance, with no Pollution Exclusion, a total of (including umbrella coverage) \$1,000,000 each occurrence/ \$2,000,000 in aggregate;

C. Comprehensive Automobile Liability insurance, a total of (including umbrella coverage) \$1,000,000 each occurrence; and

D. Umbrella coverage of \$8,000,000;

**Consultant** shall provide **Client** with a Certificate of Insurance evidencing the above noted limits. Such insurance shall not be cancelled unless the insurance company notifies **Client** at least thirty (30) days prior to its intention to cancel such insurance.

## 10. Force Majeure

Each party shall not be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from causes beyond its control, including, without limitation, strikes, lockouts, or other industrial disturbances, civil disturbances, fires, acts of God, or acts of a public enemy or unanticipated site conditions.

## 11. Materials and Equipment Handling and Retention

A. In the event that **Client** desires to dispose of materials from the Site, such materials will be transported to a location arranged and selected by **Client** and/or recommended by **Consultant** for final disposal. If a manifest is required for such disposal, such manifest shall be signed by **Client** or by **Consultant** as Agent for **Client**.

B. In the event that materials on the Site, including, but not limited to, samples and cuttings, contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations, or ordinances, such materials shall remain the property of **Client**. **Consultant** will, using a manifest signed by **Client** as generator, assist client to have such materials transported to an appropriate location for final disposal. **Client** recognizes and agrees that at no time will **Consultant** assume title of said materials. **Consultant** shall have sole responsibility for selecting the location for final disposal and arranging for the transportation of such materials, and verifying that the disposal location is properly licensed to accept and/or dispose of said materials.

## 12. Confidentiality

Unless required by law or already in the public domain, and only upon providing 14 day advance notice to **Client**, **Consultant** shall not disclose to third parties the substance of any report, test or recommendation that it gives to **Client** in connection with the Services provided for in this Agreement; and, **Consultant** agrees to treat all maps, data, reports, and other information provided by the **Client** relating to the Services as proprietary and confidential. This section does not apply to the extent that such disclosure is required to facilitate **Consultant**'s work on behalf of **Client**. For disclosures other than for waste characterization, **Consultant** will coordinate the release of such information with **Client**'s counsel.

## 13. Compliance with Law

**Consultant**, in performing the Services, shall comply with and shall require compliance by any of its subcontractors with all applicable statutes, regulations, or lawful orders of any governmental authority or agency. **Client** shall cooperate with **Consultant** in obtaining any permits or licenses required for the performance of the Services.

Certain governmental entities have mandatory contaminate reporting requirements. Both parties shall cooperate with one another in complying with such laws.

## 14. Notices

Any notice to be given to either party hereunder shall be given by making the same by First Class U.S. Mail, postage prepaid, to:

Client:

Consultant:

TRIMEDIA ENVIRONMENTAL ENGINEERING  
830 W. WASHINGTON ST  
MARQUETTE, MI 49855

## 15. Subcontracts

**Consultant** shall not subcontract all or any part of the Services without the prior written approval of **Client**. Such subcontracting shall not relieve **Consultant** of any of its obligations under this Agreement. In the event **Client** directly hires any subcontractors

to help **Consultant** in its performance of all or any part of the services, **Consultant** remains obligated to supervise those subcontractors with regard to those services.

#### **16. Entire Agreement**

This Agreement and subsequently executed Work Orders constitute the entire agreement between the parties with respect to the Services and supersedes all prior negotiations, representations, or agreements relating thereto, written, or oral, except to the extent that they are expressly incorporated herein. Unless otherwise provided for herein, no amendments, changes, alterations, or modifications of this Agreement shall be effective unless in writing executed by **Client** and **Consultant**. There are no third party rights or benefits under this Agreement.

#### **17. Governing Law**

This Agreement and the legal relations of the parties hereto shall be governed by the laws of the State of Michigan applicable to the agreements negotiated, executed, delivered, and performed in such State.

#### **18. Counterparts**

This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument.

#### **19. Captions**

Headings of particular paragraphs are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation of the scope of the paragraphs to which they refer.

#### **20. Severability**

The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall in no manner affect or impair the validity or enforceability of the remainder hereof.

## 21. Alternative Dispute Resolution and Jurisdiction

If any dispute arises out of or relates to this contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation before the American Arbitration Association, or as otherwise agreed, before having recourse to a judicial forum. No written or oral representation made during the course of any mediation shall be deemed a party admission. Remote appearances such as by Zoom or otherwise are acceptable. All parties agree that the State and Federal courts sitting in Marquette County, Michigan have jurisdiction over any litigated matters involving this Agreement.

## 22. Claims

In the event of any litigation involving this Contract to enforce any provision of this contract, to enforce any remedy available upon default under this Contract or to obtain a declaration of rights under this Contract, the prevailing party shall be entitled to recover from the other attorney's fees and costs as may be reasonably incurred by reason of the litigation.

## 23. Waiver

A. No waiver of the terms, conditions and covenants of this Agreement shall be binding and effective unless the same shall be in writing signed by the parties.

B. A waiver of any breach of terms, conditions and covenants of this Agreement shall be for that one time only and shall not apply to any subsequent breach.

## 24. Right of Entry

**Consultant** is responsible for attaining legal access to all property as required by **Consultant** to perform and complete the Services.

## 25. Reports, Recommendations, and Reliance on Data

Reports, recommendations, and other materials resulting from **Consultant's** efforts are intended solely for purposes of this Agreement: any reuse by **Client** or others for purposes outside this Agreement shall be at the user's sole risk. **Consultant** may rely upon **Client**-provided documents in performing the services required under this Agreement; however, **Consultant** assumes no responsibility or liability for their accuracy.

## 26. Access to Data / Cooperation

**Consultant** shall provide **Client** with a copy of all data, including but not limited to laboratory data, field notes, contact information, reports, and all other file documents,

immediately upon request. **Consultant's** failure to provide **Client** with timely access to data shall constitute a material breach of this Agreement.

**Consultant** shall fully cooperate with **Client** in all aspects of this matter, including in the event that **Client** solicits bids from other consultants to work on the project. Such cooperation shall include, but not necessarily be limited to, meeting with other consultants for the purpose of educating them on the background and current status of the site conditions. **Consultant** further agrees that **Client** may directly contact **Consultant's** insurance brokers or others to obtain information related to the project. **Consultant's** failure to fully cooperate shall constitute a material breach of this Agreement.

**Client**

**Consultant**

By: \_\_\_\_\_

By:  \_\_\_\_\_

**ROBERT R. LENTO, PRESIDENT**

## **APPENDIX B**

EPA Cooperative Agreement Administrative and Programmatic Conditions

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## **Administrative Conditions**

### **General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at: [EPA General Terms and Conditions effective October 1, 2022 or later \(pdf\)](#) These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

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

### **A. Correspondence Condition**

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

Federal Financial Reports (SF-425): [rtbfc-grants@epa.gov](mailto:rtbfc-grants@epa.gov) and **Donna Stingley, Grant Specialist** at [stingley.donna@epa.gov](mailto:stingley.donna@epa.gov)

MBE/WBE reports (EPA Form 5700-52A): **Karen Sykes** at [Sykes.Karen@epa.gov](mailto:Sykes.Karen@epa.gov) and [region5closeouts@epa.gov](mailto:region5closeouts@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: **Donna Stingley, Grant Specialist** at [stingley.donna@epa.gov](mailto:stingley.donna@epa.gov) and **Ashley Green, Project Officer** at [Green.Ashley@epa.gov](mailto:Green.Ashley@epa.gov)

Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: **Ashley Green, Project Officer** at [Green.Ashley@epa.gov](mailto:Green.Ashley@epa.gov)

## **Programmatic Conditions**

### **FY23 Brownfields Cleanup Cooperative Agreement Infrastructure Investment and Jobs Act Funds Terms and Conditions**

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

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

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

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2023 (FY23) competition for Brownfield Cleanup cooperative agreements. EPA's approval of the FY23 application indicates that the CAR is in compliance with the Site Characterization requirement (as outlined in Section III.B.9. of the FY23 Cleanup Grant Guidelines) and has provided information to EPA that demonstrates that a sufficient level of site characterization from environmental site assessments have been performed for the remediation work to begin on the site subject to this agreement.

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

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

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

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

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 \(BABA\) provisions of the Infrastructure Investment and Jobs Act \(IIJA; also known as Bipartisan Infrastructure Law or BIL\) \(P.L. 117-58, §§70911-70917\)](#). The CAR can also refer to EPA's [Frequently Asked Questions for BABA](#) for more information.

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

- a. Track and report on expenditures of IIJA funds.
- b. Track and report outputs and outcomes achieved with IIJA funds.

## II. SITE OWNERSHIP/RECIPIENT ELIGIBILITY REQUIREMENTS

### A. Site Ownership

1. The CAR may only clean up the site(s) it solely owns that is specified in the workplan for this cooperative agreement. The CAR must retain ownership of the site(s) while Brownfield Cleanup Grant funds are disbursed for the cleanup of the

site(s) and must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site(s). For the purposes of this agreement, the term "owns" means fee simple title unless the EPA previously approved a different ownership arrangement.

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

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

- a. Performing "all appropriate inquiries" into the previous ownership and uses of the property before acquiring the property.
- b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through any direct or indirect familial relationship, any contractual, corporate, or financial relationship, or through the result of a reorganized business entity that was potentially liable.

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

- c. Demonstrating that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).
- d. Taking "reasonable steps" with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.
- e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.
- f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.
- g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).
- h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

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

107(b), 107(q) and 107(r).

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

### C. Site Substitution and Cleanup Method Changes

1. The CAR must use funds provided by this agreement to clean up the brownfield site(s) in the EPA-approved workplan. The CAR shall not substitute a different brownfield site.
2. The CAR shall not make substantial changes to the cleanup method described in the workplan, including changes to the expected cleanup based on public comment or other reasons, without prior EPA approval.

## III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Sufficient Progress

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

The EPA Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 18 months and 30 months from the date of award. If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Grants Management Officer or Award Official. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances.

Sufficient progress at 18 months is indicated when:

- an appropriate remediation plan is in place, institutional control development (if necessary) has commenced;
- initial community engagement activities have taken place;
- relevant state or tribal pre-cleanup requirements are being addressed;
- a Qualified Environmental Professional has been procured; and
- a solicitation for remediation services has been issued.

Sufficient progress at 30 months is indicated when:

- at least 50% of the site-specific activities have been completed and funds have been requested by and disbursed to the CAR;
- a Quality Assurance Project Plan has been approved by EPA; and
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

### B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement.

Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.
- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
- d. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.

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

- e. 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.
- f. Reviewing and approving that the Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, meets the Brownfields Program's requirements for an ABCA.
- g. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate. This may include reviewing requests for proposals, invitations for bid, scopes of work and/or plans and specifications for contracts over \$250,000 prior to advertising for bids.
- h. Reviewing the qualifications of key personnel. (EPA does not have the authority to select employees or contractors, including consultants, employed by the CAR or subrecipients receiving pass-through awards.)
- i. Reviewing information in performance reports to ensure all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1. The EPA Project Officer will provide waivers to provisions a. – d. 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. This requirement also applies to procurement processes that were completed before the award of this cooperative agreement. See the [\*Brownfields Grants: Guidance on Competitively Procuring a Contractor\*](#) for additional information.

CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to conduct site remediation activities vs. community engagement) and to allow the ability for work be performed concurrently at multiple sites.

2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff to coordinate, direct, and oversee the brownfield site cleanup activities at a given site.

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

- a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

- b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by

including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

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

#### **D. Quarterly Performance Reports**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly performance reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies from the EPA-approved workplan and budget shall be included in the report. The report shall also include any changes of key personnel concerned with the project that were approved by the EPA Grants Management Officer or Award Official. (Note, as provided at 2 CFR § 200.308, *Revision of budget and program*, the CAR must seek prior approval from the EPA Grants Management Officer or Award Official for a change in a key person.)

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports unless approval is obtained from the EPA Project Officer to use an alternate format for reports.

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

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Cleanup cooperative agreement and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
- c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
- d. An update on the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- e. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used (if applicable); and total remaining funds. The budget summary table must include costs that are charged to the "other" budget object class category (e.g., subawards, etc.).

The CAR shall include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. The CAR shall include a statement on funding transfers [1] among direct budget categories or programs, functions and activities that occurred during the quarter and cumulatively during the period of performance.

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

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

3. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to clean up the specific property(ies) under this cooperative agreement.

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

#### **E. Property Profile Submission**

1. The CAR must report on interim progress (e.g., clean up started) and any final accomplishments (e.g., clean up completed, contaminants removed, institutional controls required, engineering controls required) by completing and submitting relevant portions of the electronic Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly performance report to the EPA Project Officer. The CAR must utilize the electronic version of the Property Profile Form in ACRES unless approval is obtained from the EPA Project Officer to use the hardcopy version of the Property Profile Form or its use is included in the approved workplan.

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

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final performance report on the cooperative agreement via email; unless the EPA Project Officer agrees to accept a paper copy of the report. The final performance report shall document and summarize the elements listed in Section III.D.2., as appropriate, for activities that occurred over the entire project period.

### **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. 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**

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible

programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Ensuring cleanup activities at a particular site are authorized by CERCLA § 104(k) and the EPA-approved workplan.
- b. Ensuring that a cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
- d. Using up to \$50,0000 of the cooperative agreement funds to conduct unforeseen environmental site assessment activities only when:
  - i. the state or tribal environmental authority requires additional site characterization in order to move forward with the remediation, as provided at CERCLA § 104(k)(10)(B)(i)(I); or the site is not enrolled in the State or Tribal response program and the Environmental Professional recommends, in writing, additional site characterization in order to move forward with the remediation, as provided at CERCLA § 104(k)(10)(B)(i)(I); and
  - ii. the CAR has exhausted available resources to conduct the environmental site assessment, including the resources described in the FY23 application.

The CAR must obtain written approval from the EPA Project Officer to use funding from this cooperative agreement to characterize the site.

- e. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in *Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance* available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.
- f. Performing limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
- g. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
- h. Establishing an Administrative Record.
- g. Using a portion of the cooperative agreement funds to purchase environmental insurance for the remediation of the site. [Funds shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient*.]
- j. Any other eligible programmatic costs, including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and managing subawards to the extent required to comply with 2 CFR § 200.332 and the "Establishing and Managing Subawards" General Term and Condition; and carrying

out community engagement pertaining to the cleanup activities.

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

3. Under CERCLA § 104(k)(5)(E), CARs and subrecipients may use up to 5% of the sum of 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 **\$48,212.50**. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. The term "administrative costs" does not include:

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

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

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.
  - i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
  - ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
  - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
  - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
  - v. Financial reporting under 2 CFR § 200.328;
  - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
  - vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.
- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subawards are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

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

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

- a. 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 the cooperative agreement;
- e. To pay for a penalty or fine;
- f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
- g. To pay for a response cost at a brownfield site for which the CAR or subaward recipient is potentially liable under CERCLA § 107;
- h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
- i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

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

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
- c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

## V. CLEANUP REQUIREMENTS

### A. Authorized Cleanup Activities

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

2. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 60 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The 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>.

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

4. The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the EPA Project Officer and the QAM at least annually and may also be submitted when changes occur (the QAM or EPA Project Officer may add additional specifications).

5. The recipient must submit a QAPP Checklist with the QAPP. The checklist will be provided by the Project Officer to the recipient.

**6. Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy

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

### C. Public Involvement and Community Outreach

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

### D. Public Awareness

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

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

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

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

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

d. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable.

Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America

emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

2. The CAR agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

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

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

#### **E. Administrative Record**

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

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

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented.

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

#### **G. Completion of Cleanup Activities**

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

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

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative agreement for a minimum of three (3) years following submission of the final financial report unless one or more of the conditions described in the regulation applies. The CAR shall provide access to records relating to cleanups supported with Cleanup cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.337.

2. The CAR has an ongoing obligation to advise EPA if it assessed any penalties resulting from environmental noncompliance at the site(s) subject to this agreement.

### **VI. PAYMENT AND CLOSEOUT**

For the purposes of these Terms and Conditions, the following definitions apply: "payment" is EPA's transfer of funds to the CAR; "closeout" refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

#### **A. Payment Schedule**

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

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

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

1. Closeout will be conducted in accordance with 2 CFR § 200.344. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.

2. The CAR, within 120 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement.

a. The CAR must submit the following documentation:

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

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

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

c. As required by 2 CFR § 200.344, the CAR must immediately refund to EPA any balance of unobligated (unencumbered) advanced cash or accrued program income that is not authorized to be retained for use on other cooperative agreements.

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

Davis-Bacon Addendum

#### **Davis-Bacon Terms and Conditions For Cooperative Agreements to Governmental Entities**

#### **DAVIS-BACON PREVAILING WAGE TERM AND CONDITION**

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies,

obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

### 1. Applicability of the Davis-Bacon Prevailing Wage Requirements

After consultation with DOL, EPA has determined that for Brownfields Grants for remediation of sites contaminated with hazardous substances and petroleum, DB prevailing wage requirements apply when the project includes the following activities.

Hazardous substances contamination:

- (a) All construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings.

Petroleum contamination:

- (a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,

- (b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or

- (c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other petroleum site cleanup activities such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will not normally trigger DB requirements.

If the CAR encounters a unique situation at a site (e.g., unusually extensive excavation, construction of permanent facilities

to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

## 2. Obtaining Wage Determinations

(a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain proposed wage determinations for specific localities at <https://sam.gov/>.

(i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments), the CAR shall use the "Heavy Construction" classification for the following activities:

Hazardous substances contamination: excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings.

Petroleum contamination: installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement.

(ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments, the CAR shall use the "Building Construction" classification for the following activities:

Hazardous substances contamination: construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height).

Petroleum contamination: soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant.

(iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete

replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the "Heavy Construction" classification. (Only applies to petroleum contamination.)

(iv) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the CAR shall use "Residential Construction" classification. (Only applies to hazardous substances contamination.)

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a CAR, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation), the Agency will advise the CAR which General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the CAR shall monitor <https://sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e., bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the CAR.

(ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the CAR carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during

such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA Award Official. The Award Official will transmit the report to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period

that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for

bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

(ii)(B) Each payroll submitted to the CAR shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full

wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under

the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### 4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **CAR** shall insert the following clauses set forth in paragraphs

(a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **CAR**, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each

such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>