Agenda Item #3K-4

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	**April 5, 2011**	**Consent [X]**	**Regular [ ]**
		Public Hearing [ ]	
Submitted By:	**Water Utilities Department**		
Submitted For:	**Water Utilities Department**		

I. EXECUTIVE BRIEF

Motion and title: Staff recommends motion to approve: an "Interlocal Subgrant Agreement" with the Treasure Coast Regional Planning Council (TCRPC) to facilitate Brownfields cleanup and redevelopment of the former Pike Utilities property, located at 4220 Charleston Road, Lake Worth.

Summary: Recently, Palm Beach County Water Utilities Department (WUD) has received complaints from area residents regarding the unsightliness of the former Pike Utility property. WUD is anticipating removal of all remaining wastewater infrastructure and property cleanup by September 20, 2011 in anticipation of future redevelopment in accordance with Florida Department of Environmental Protection (FDEP) conditional approval. The TCRPC has allocated $200,000 from a Federal Grant toward site cleanup. The total project cost is anticipated to be less than $350,000 with funding in excess of the Environmental Protection Agency (EPA) Brownfields funding coming from WUD's revenue. District 2 (MJ)

Background and Justification: Pike Utilities operated a wastewater treatment facility during the 1970s and 1980s, which ceased in mid-1980 when the facility was decommissioned. Palm Beach County acquired the property in 1988. In 2000, contamination was discovered during a preliminary soil investigation, which led to a Phase 1 and limited Phase 2 Environmental Site Assessment (ESA) that was completed by 2006, as Palm Beach County entertained redevelopment of the site for affordable housing. However, redevelopment did not occur, but for reasons other than site contamination. The FDEP requires site cleanup in accordance with Chapter 62-780, F.A.C. by September 2011.

Attachments:

1. Two (2) Original Interlocal Subgrant Agreements
2. One (1) Copy EPA Grant Agreement
3. Location Map

Recommended By: _____ 3/18/2011
Department Director **Date**

Approved By: _____ 3/25/11
Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	**2011**	**2012**	**2013**	**2014**	**2015**
Capital Expenditures	0	0	0	0	0
Operating Expenditures	**$350,000.00**	0	0	0	0
External Revenues	**($200,000.00)**	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	**$150,000.00**	0	0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Budget Account No.: **Fund** 4001 **Agency** 720 **Org.** 1110 **Object** 3101

Is Item Included in Current Budget? Yes **X** No ____

Reporting Category **N/A**

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The Water Utilities Department will receive $200,000 in grant revenue from the USEPA through the TCRPC under this agreement. Remaining project funding of $150,000 will come from WUD revenues.

C. Department Fiscal Review: Debra M West

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

3/22/11
OFMB 3/21/11 3/22/11

3/23/11
Contract and Development Control E. Jones 3/23/11

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

3/23/11
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

INTERLOCAL SUBGRANT AGREEMENT BETWEEN

PALM BEACH COUNTY

AND

TREASURE COAST REGIONAL PLANNING COUNCIL

This Interlocal Subgrant Agreement (Agreement) is hereby entered into this _____ day of _____ _____, 2011 by and between the Treasure Coast Regional Planning Council (hereinafter referred to as either "TCRPC", "Grantor" or "Council") and Palm Beach County (herein referred to as "Subgrantee", or "County"), each constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969," authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and,

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to exercise jointly any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, Grantor has entered into an Assistance Agreement with EPA bearing Assistance Id # 2B-95428509-0 which also includes the following attachments: (i) Administrative Conditions and (ii) the 2009 Brownfields American Recovery and Reinvestment Act (ARRA) Terms and Conditions-Region 4 Supplemental RLF (the foregoing Assistance Agreement together with the attachments referred to in (i) and (ii) are all collectively referred to in this Agreement as the "EPA Grant Agreement"); and

WHEREAS, Subgrantee acknowledges receipt of a copy of the EPA Grant Agreement; and

WHEREAS, it is intended that Grantor will receive funds from the Environmental Protection Agency (EPA) pursuant to the EPA Grant Agreement ("Grant Funds") and is authorized to make certain subgrants; and

WHEREAS, the Property, hereinafter described, has been contaminated with various materials and/or substances, and

WHEREAS, the subgrant funds to be disbursed under this Agreement are to be used to conduct a brownfields cleanup and/or remediation activities on a portion of the Property as set forth in this Agreement; and

Attachment # 1

WHEREAS, the Treasure Coast Regional Planning Council has experience in managing and operating its regional Brownfields program related to EPA Grants; and

WHEREAS, the County has experience in the receipt and performance of State and Federal Grants including Brownfields grants and has itself a brownfields program or programs, and

WHEREAS, the Subgrantee represents and warrants that it is the fee simple title owner of the property conveyed to Palm Beach County by Warranty Deed recorded in ORB 5807 Pg 86 of the Public Records of Palm Beach County, Fl. (herein referred to as the "Property" or "Site"); and

WHEREAS, the Subgrantee agrees that it will retain fee simple title ownership of the Property continuously from the effective date of this Agreement through and including the completion of the Project and the date of final EPA closeout of the EPA Grant Agreement related to the Property; and

NOWTHEREFORE, in consideration of the foregoing WHEREAS clauses which are incorporated herein, and for one dollar and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

SECTION 1. FUNDING AND LIMITATIONS

TCRPC agrees to allocate from the Grant Funds, to the extent allowed by the EPA Grant Agreement and EPA regulations, $200,000.00 to be used to in accordance with this Agreement. The foregoing allocated funds are referred to in this Agreement as "Subgrant Funds".

Notwithstanding any provisions of this Agreement the following shall control: (i) TCRPC shall not have any obligation under this Agreement to allocate or expend funds from the EPA Grant Agreement in excess of $200,000.00, (ii) TCRPC's obligation to expend any Subgrant Funds arising from the EPA Grant Agreement in connection with TCRPC's performance or fulfillment of the terms and conditions of this Agreement is subject to the condition precedent that EPA shall have given written approval, in advance, of all expenditures, (iii) TCRPC's obligation to expend any Subgrant Funds is further subject to and limited by the Contingent Payment Clause set forth below, (iv) if EPA does not approve of any part or all of this Agreement then TCRPC shall have no obligation to perform or fulfill such part or the whole of this Agreement, as applicable, not approved by EPA, and (v) even if TCRPC receives funds from EPA, none of the Subgrant Funds will be disbursed to the County, instead TCRPC will utilize such Subgrant Funds as set forth in this Agreement and as allowed by the EPA Grant Agreement and EPA.

***Contingent Payment Clause**—Notwithstanding any provisions of this Agreement the following shall control: it shall be a condition precedent to any liability of TCRPC for any payment or payments under or in connection with this Agreement, that TCRPC has actually received the funds from EPA for the payment or payments. If EPA has not paid TCRPC for any reason whatsoever, including but not limited to, EPA's financial inability to pay or EPA's unwillingness to pay or EPA's determination that a request for payment is for ineligible or unallowable costs under the EPA Grant Agreement or for any other reason whatsoever whether related to Subgrantee or not, the Subgrantee agrees that TCRPC shall not be liable for any such payments, nor be indebted to the Subgrantee. Subgrantee assumes the risk of non payment by EPA. In no event shall TCRPC be obligated to use its own funds to fund its obligations under this Agreement. If the funds are not actually received by TCRPC from EPA, regardless of the reason, TCRPC shall not be obligated to make any expenditures in connection with this Agreement.*

SECTION 2. PURPOSE, OWNERSHIP AND COUNTY CERTIFICATIONS

A. The purpose of this Agreement is to specify the respective roles and responsibilities that will be undertaken both by Council and the County, under this Agreement and the EPA Grant Agreement.

B. County shall deliver to TCRPC prior to TCRPC's execution of this Agreement title evidence, at no expense to TCRPC, which shall be in the form of a current title search (certified within 30 days of the date of delivery to TCRPC) by a Florida licensed title insurance company or an attorney licensed to practice in the State of Florida, accompanied by a certification by such title insurance company or attorney to TCRPC (and others required by TCRPC) which shall certify that County is the fee simple title owner of the Property (and there shall be delivered to TCRPC with such title search and certification, if requested by TCRPC, copies of all recorded instruments currently effecting the title to the Property). In addition, TCRPC, throughout the period of effectiveness of this Agreement, may require the Subgrantee, at its expense (not to be reimbursed by Grantor), to update this title information so that it is current (meaning that the effective date of the title search is no more than 30 days prior to its delivery to TCRPC). Such update shall be delivered to TCRPC within 20 days of a written request therefor.

C. County shall deliver to Grantor simultaneously with the execution and delivery of this Agreement to Grantor all information relating to County's overall environmental compliance history at the Property including any penalties resulting from environmental non compliance at the Property.

D. The County hereby certifies the following: (i) that the Property is not subject to any unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued or entered into under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), (ii) the County is not currently, nor has it been, subject to any penalties resulting from environmental non compliance at the Property, (iii) the County is not a potentially liable party under the CERCLA § 107 pertaining to the Property [County is advised that the investigation and/or opinion of County's counsel is not binding on the Federal Government] and (iv) the Property is not listed, or proposed for listing on the National Priorities List of the EPA or the U.S..

SECTION 3. ROLES AND RESPONSIBILITIES

TCRPC and the County will have the respective roles and responsibilities as set forth below.

A. TCRPC's primary responsibilities:

1. TCRPC staff will provide technical assistance to the County, as appropriate and necessary, in furtherance of the Project.

2. TCRPC staff will provide compliance, technical and administrative support to the County, when requested by the County, and when appropriate and necessary, to assist the County in its compliance with the provisions of the EPA Grant Agreement.

3. Subject to the Contingent Payment Clause, select and secure the services of a qualified environmental professional as required by the EPA Grant Agreement who will act as site manager and will oversee the preparation all necessary remedial planning documents and site-specific RLF cleanup plans, including but not limited to:

a. Analysis of Brownfields Cleanup Alternatives (ABCA)
b. Quality Assurance Project Plans (QAPP)
c. Community Relations Plan (CRP)
d. Scope of Work
e. Budget
f. Final Cleanup Report

The preparation of the above documents and conducting the brownfields cleanup and/or remediation activities (unless the no action alternative is selected) in regard to the Property consistent with said documents, is referred to in this Agreement as the "Project".

4. The qualified environmental professional shall be an engineering firm or other firm that shall prepare required remedial planning documents and site-specific RLF cleanup plans referred to in 3. above as necessary to implement the Project. Such engineering or other firm (or their subcontractors) shall also conduct any approved cleanup and/or remediation activities. The nature and extent of any cleanup or remediation activities to be conducted has not been determined as of the effective date of this Agreement. The nature and extent of any cleanup or remediation activities shall be determined in connection with the preparation of the documents referred to in 3 a.-f., inclusive, above and their review and approval by TCRPC and EPA. One of the alternatives to be considered under Analysis of Brownfields Cleanup Alternatives is a no action alternative. If such alternative is selected and approved by TCRPC and EPA then notwithstanding anything in this Agreement to the contrary, no cleanup or remediation activities will be conducted. If any cleanup plan or remediation activities are approved by TCRPC and EPA these plans and activities shall be subject to change based upon comments from the public or any new information acquired.

5. Manage and oversee the ongoing cleanup and/or remediation work relating to the Property as appropriate for compliance with the EPA Grant Agreement. Notwithstanding the foregoing, since TCRPC does not have engineering expertise on staff TCRPC shall not have any responsibility for judging or modifying any of technical aspects of cleanup or remediation activities which are to be performed by the qualified environmental professional or its subcontractors.

6. Support the County's implementation of the Project.

7. Provide copies to the County of all of the Records (hereinafter defined) which may be made, received or acquired by TCRPC during the effective period of this Agreement.

B. County primary responsibilities:

1. Except as specifically set forth above as TCRPC responsibilities, the County shall perform and comply with all provisions of the EPA Grant Agreement, as required of a subgrantee or sub-recipient. All such provisions of the EPA Grant Agreement as to which a subgrantee or sub-recipient is to comply with and all provisions of the EPA Grant Agreement which indicate they are to be included in subgrants or lower tier transactions are hereby incorporated herein by reference as obligations of the County. The County shall not perform any act or refuse to comply with any TCRPC requests which would cause TCRPC to be in violation of the terms and conditions of EPA Grant Agreement.

2. Subgrantee is required to be familiar with and shall comply with all Federal, State and local laws, ordinances, rules, and regulations that in any manner affect the performance by Subgrantee of its obligations under this Agreement.

3. Keep and maintain all documents, papers, accounting and financial records, programmatic records, analysis of reasonable brownfields cleanup alternatives including no action, site investigation reports, the cleanup plan (if any), cleanup standards used, responses to public comments, plans, specifications, drawings, verification that shows that cleanup and/or remediation is complete and all other data and information, and supporting documentation pertaining to this Agreement and the cleanup and/or remediation work (collectively the "Records") for a minimum of three years following the expiration or any termination of this Agreement. Notwithstanding the three year period the County shall not dispose of or destroy any Records without written approval of TCRPC.

4. Permit TCRPC, EPA, the U.S. Office of Inspector General and their designated representatives access to all of the Records at any time during normal business hours upon 72 hours written notice for the purposes of making audits, examinations, inspections, excerpts, transcriptions, copies and any other reproductions thereof, without charge, as may be requested by any of said parties.

5. If EPA elects to have Substantial Involvement in the Project or this Agreement as the term Substantial Involvement is used in the EPA Grant Agreement the Subgrantee will cooperate with EPA and comply with all EPA requirements in regard thereto.

6. Under the EPA Grant Agreement TCRPC is required to provide various information and reports to EPA on many different subjects and at many different times. It shall be Subgrantee's obligation to provide all such information and reports to TCRPC, as requested by TCRPC, in sufficient time so that TCRPC may provide such information and reports to EPA on or before their due date.

7. Subgrantee represents and warrants that the Property directly abuts a public road known as Charleston St.. Therefore, EPA, TCRPC, their agents, employees, representatives and contractors (and their subcontractors) shall at all times have access to and from the Property over and through Charleston St.. The Subgrantee shall keep the Property at all times secure and safe. If this Agreement is terminated (whether for convenience or cause) the rights of EPA, TCRPC, their agents, employees, representatives and contractors (and their subcontractors) to have access to and from the Property over and through Charleston St. shall survive termination so that TCRPC and County can comply with the applicable provisions of the EPA Grant Agreement to secure the Site.

8. Subgrantee must display on the Property the American Recovery and Reinvestment Act of 2009 ("ARRA") Logo in a manner that informs the public that the project is an ARRA investment. The ARRA logo may be obtained from the EPA grants office listed in the EPA Grant Agreement. If the EPA logo is displayed along with the ARRA logo and logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead the EPA logo must be accompanied with a statement indicating that the Subgrantee received financial assistance from EPA for the project.

9. Simultaneously with Subgrantee's execution and delivery of this Agreement to Grantor, the Subgrantee shall deliver to Grantor a copy of the Phase I and Phase II Environmental

Assessment of the Property performed according to the American Society for Testing and Materials (ASTM) standards (collectively, the "Assessment"). The Subgrantee agrees that the no portion of the Subgrant Funds will be used for the payment of any cost or expense related to the Assessment. The Assessment shall include, but is not limited to site background, the threat posed by the contaminant(s) to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.

10. The Subgrantee agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying if required of Subgrantee by the EPA Grant Agreement. The Subgrantee shall promptly submit to the Grantor and the Federal Government the required certification and disclosure forms required by Title 40 CFR Part 34. In accordance with the Byrd Anti Lobbying Amendment any recipient of grant funds who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure. Subgrantee shall abide by its respective OMB Circular (A-21, A-87, or A-122) which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

11. Suspension and Debarment. The Subgrantee shall fully comply, if required by the EPA Grant Agreement, with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions ("Doing Business with Other Persons") and provide documentation promptly to Grantor or EPA as may be required by Grantor or EPA. Subgrantee shall not engage in any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions". Subgrantee acknowledges that failing to disclose the information required in 2 CFR 180.335 may result in delay or negation of this Agreement and pursuance of legal remedies, including suspension and debarment. Subgrantee may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension and Other Responsibility Matters".

C. The PARTIES responsibilities:

1. Cooperate in the exchange of TCRPC and County, Project technical, administrative and other relevant information in the interest of implementing this Agreement.

2. Conduct project and public outreach coordination meetings, as necessary.

3. Initiate joint press releases and public information flyers to inform stakeholders of project status, as appropriate.

SECTION 3. OTHER TERMS AND CONDITIONS

A. In addition to the right of TCRPC to terminate this Agreement for cause, TCRPC may at any time terminate this Agreement as follows: (i) for the convenience of TCRPC without cause, or (ii) in the event that EPA terminates the EPA Grant Agreement for convenience or cause. In the event TCRPC has determined to terminate this Agreement TCRPC shall provide written notice to the County which shall specify the effective date of termination. In the event of termination of this Agreement by TCRPC, regardless of whether the termination is for cause or convenience, the County shall not be entitled to any compensation or any other remedy, all of which are waived by the County. Upon the effective date of termination TCRPC shall

have no further obligations under this Agreement and Subgrantee's obligations shall be as set forth in the second paragraph under B. below.

B. This Agreement shall commence on the date it has been executed by the last of the two parties hereto to execute it ("Effective Date"). After commencement, this Agreement shall continue in effect until the earlier of the following: (i) complete performance of the terms and conditions of this Agreement including completion by Subgrantee of all of its obligations under this Agreement (and approval thereof by Grantor) including but not limited to all close out matters and reports required by EPA and the EPA Grant Agreement, or (ii) termination pursuant to any provision of this Agreement.

Notwithstanding the above paragraph or any of the other provisions of this Agreement the Subgrantee's obligations hereunder to comply with the EPA Grant Agreement and all EPA requirements and the requirements of this Agreement that relate thereto shall survive any expiration or termination of this Agreement (regardless of who terminates and whether termination is for cause or without cause) as to the obligations of Subgrantee that were completed or required to be completed on or before the effective date of termination or that are specified to survive termination.

C. The Grantor and Subgrantee are political subdivisions as defined in Chapter 768.28, Florida Statutes and nothing herein shall serve as a waiver of sovereign immunity by Grantor or Subgrantee.

D. Modifications of this Agreement may be requested by any party. Changes, which are mutually agreed upon, shall be valid only when reduced to writing, duly signed by each party and attached to the original Agreement.

E. The County and Council agree to be governed by applicable State and Federal laws, rules and regulations.

F. Except as otherwise permitted by this Agreement, neither TCRPC nor County may assign their rights or obligations under this Agreement without the written consent of the other party.

G. The County shall not, during the term of this Agreement, sell, transfer, convey or dispose of all or any portion of the fee simple title to the Property.

H. If any term or provision of this instrument shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless not approved by EPA. If not approved or allowed by EPA then this Agreement shall terminate.

I. This instrument contains the entire agreement between the parties related to the subject matter hereof and supersedes all prior and contemporaneous agreements.

J. The singular shall include the plural and plural the singular, and pronouns shall be read as masculine, feminine or neuter, all as the context may require. The terms "hereof" "herein" "hereto" "hereunder" and any similar words refer to this instrument in its entirety. This instrument shall be construed and enforced in accordance with the laws of the State of Florida and shall be binding upon and inure to the benefit of the parties hereto, their permitted successors and assigns. Palm Beach County shall be proper venue for any litigation

involving this instrument. This Agreement shall not, solely as a matter of judicial construction, be construed more strictly against one party than the other. No waiver of any provision of this Agreement shall be effective against either party unless it is in writing and signed by the party to charged therewith, and shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver. Nothing contained in this instrument shall be deemed to make the parties partners or engaged in a joint venture with one another. The Subgrantee is and shall be in the performance of all activities under this agreement an independent contractor, and not an employee, agent, or servant of Grantor. This instrument may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this instrument. An executed facsimile copy or executed emailed copy of this instrument shall be considered for all purposes an original.

SECTION 4. NOTICE AND CONTACT

All notices provided under or pursuant to the Agreement shall be in writing, delivered either by hand, overnight express mail, or by first class, certified mail, return receipt requested, to the representatives identified below at the address set forth below:

For the COUNTY:
Shannon LaRocque
Assistant County Administrator
Palm Beach County
301 North Olive Avenue
West Palm Beach, FL 33401

For the Council:
Michael J. Busha
Executive Director
Treasure Coast Regional Planning Council
421 SW Camden Avenue
Stuart, FL 34994

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed in their name and on their behalf by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized.

SUBGRANTEE: PALM BEACH COUNTY, a political Subdivision of the State of Florida

By its BOARD OF COUNTY COMMISSIONERS

By: _____ Date: _____
Karen T. Marcus, Chair

ATTEST:
SHARON R. BOCK, Clerk & Comptroller

_____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:_____
Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By:_____
Department Director

WITNESSES:

Sign Name:_____

Print Name:_____

Sign Name:_____

Print Name:_____

GRANTOR: TREASURE COAST REGIONAL PLANNING COUNCIL

BY:_____ Date:_____
Michael J. Busha, As its Executive Director

U. S. ENVIRONMENTAL PROTECTION AGENCY
NOTICE OF AWARD

RECIPIENT NAME AND ADDRESS:

Michael Busha, Executive Director
Treasure Coast Regional Planning Council
421 S.W. Camden Avenue
Stuart, Florida 34994

SEP 2 2009

TREASURE COAST
REGIONAL PLANNING COUNCIL

2B-95428509-0

[X] Assistance Agreement

[ ] Assistance Amendment
- [ ] Increase
- [ ] Decrease
- [ ] Time Extension
- [ ] Administrative

Enclosed are two copies of an Assistance Agreement from the U.S. Environmental Protection Agency.

To accept this Notice of Award, please carefully review any terms and conditions, sign[1], and return one original copy to the following address within 21 days[2] of the mailing date on the Assistance Agreement:

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 4
GRANTS MANAGEMENT OFFICE
61 FORSYTH STREET, SW
ATLANTA, GA 30303

ATTN: Keva Lloyd

The other original should be retained for your official records and copies distributed within your organization as needed. Please note, funds will not be available for draw until we receive your countersigned affirmation of the award.

To assist you with your post award management responsibilities, please see *"Reporting Forms and Guidance for Administration of Your Assistance Agreement*[3]*."* This document contains important post-award reporting requirements and instructions on how to receive payments. To view this and other EPA grant-related information, visit our Region 4 Grants Office website at:

www.epa.gov/region4/grants/

Please reference the EPA Assistance Number on all future correspondence regarding this Assistance Agreement. If you have any questions, you may contact the Grants Specialist identified above at

(404)562-8420 or Lloyd.Keva@epa.gov

[1] Must be signed by authorized representative as shown on the Affirmation of Award signature block or formally authorized delegate.
[2] Failure to countersign and return within 21 days of the mailing date may result in withdrawal of this award.
[3] Please contact your Grant Specialist if you need a paper copy of this document.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

ASSISTANCE ID NO.			DATE OF AWARD
PRG	DOC ID	AMEND#	09/24/2009
2B -	95428509	- 0	
TYPE OF ACTION: New			MAILING DATE: 09/24/2009
PAYMENT METHOD: ASAP			ACH#: 40150

RECIPIENT TYPE:
Special District

RECIPIENT:
Treasure Coast Regional Planning Council
421 S.W. Camden Ave.
Stuart, FL 34994
EIN: 59-1693080

Send Payment Request to:
Las Vegas Finance Center

PAYEE:
Treasure Coast Regional Planning Council
421 S. W. Camden Ave.
Stuart, FL 34994

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Greg Vaday 421 S.W. Camden Ave. Stuart, FL 34994 **E-Mail:** gvaday@tcrpc.org **Phone:** 772.221.4060	Margaret Olson 61 Forsyth Street Atlanta, GA 30303-8960 **E-Mail:** olson.margaret@epa.gov **Phone:** 404-562-8601	Keva Lloyd Grants Management Office **E-Mail:** Lloyd.Keva@epa.gov **Phone:** 404-562-8420

PROJECT TITLE AND DESCRIPTION
Brownfields Assessment and Cleanup Cooperative Agreements

This award provides American Recovery and Reinvestment Act (ARRA) funding for the Treasure Coast Regional Planning Council to provide a Revolving Loan Fund for the community to assist funding cleanup planning and remediation activities. The purpose of these activities is to promote redevelopment of the funded sites and future reuse of the property that does not pose a threat to human health and the environment.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2009 - 09/30/2012	10/01/2009 - 09/30/2012	$450,000.00	$450,000.00

NOTICE OF AWARD

Based on your application dated 08/21/2009, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $450,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $450,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

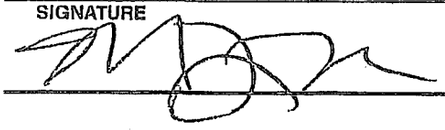
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
61 Forsyth Street Atlanta, GA 30303-8960	U.S. EPA, Region 4 Resource Conservation and Recovery Act Division 61 Forsyth Street Atlanta, GA 30303-8960

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

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
Digital signature applied by EPA Award Official	Elaine Curles, Grants Management Officer	09/24/2009

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Michael Busha, Executive Director	9/29/2009

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 450,000	$ 450,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$	$ 0
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 450,000	$ 450,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	American Recovery and Reinvestment Act of 2009 CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	0904VTS017	0910	E4S	04V2	402D79E	4114	G400SB00		450,000
									450,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$32,000
2. Fringe Benefits	$12,500
3. Travel	$1,000
4. Equipment	$0
5. Supplies	$1,500
6. Contractual	$3,000
7. Construction	$0
8. Other	$400,000
9. Total Direct Charges	$450,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	$450,000
12. Total Approved Assistance Amount	$450,000
13. Program Income.	$0
14. Total EPA Amount Awarded This Action	$450,000
15. Total EPA Amount Awarded To Date	$450,000

Administrative Conditions

1. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds.

2. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

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

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

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

3. ELECTRONIC TRANSFER OF FUNDS

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer after January 2, 1999. In order to comply with the Act, a recipient must receive payments via one of two electronic mechanisms available to them:

A) Automated Standard Application for Payments (ASAP)

ASAP is an automated drawdown system sponsored by the U.S. Department of the Treasury. Recipients must enroll with Treasury. Additional information concerning ASAP can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485, **http://www.epa.gov/ocfo/finservices/payinfo.htm** or by visiting www.fms.treas.gov/asap.

Under this payment mechanism, the recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application.

In order to receive payments via ASAP the recipient must first complete an ASAP enrollment application and have an ASAP account set up.

B) Electronic Funds Transfer (EFT)

Under this payment mechanism, the recipient submits an EPA Payment Request Form to EPA for approval. Approved funds are credited to the recipient organization at its designated financial institution. In order to receive EFT payments the recipient must first complete and return the *ACH Vendor/Miscellaneous Payment Enrollment* form (TFS Form 3881) to the EPA Las Vegas Finance Center. The Enrollment form can be found by visiting http://www.epa.gov/ocfo/finservices/payinfo.htm#grants. Upon receipt and processing of the enrollment form, the LVFC will send you a letter assigning you an EFT Control Number. At that time you will also receive an EFT payment process Recipient's manual along with a supply of EPA Payment Requests and other required forms. Additional information concerning EFT can be

obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485.

4. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFR)

An Interim Federal Financial Report (FFR-SF425) is to be submitted to the Las Vegas Finance Center within 90 days after the end of the quarter of the anniversary of the project period start date The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. Interim FFRs should be submitted to: US EPA, LVFC, PO Box 98515, Las Vegas, NV 89193 or by Fax to: 702-798-2423.

B) Final Federal Financial Reports

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Federal Financial Report – also called the SF425 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Please note that these reports are required by EPA grant regulations (see 40 Code of Federal Regulations §31.41(c)). Completed SF425s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Grants Management Office if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

5. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at http://www.usfa.dhs.gov/applications/hotel/ to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

6. LOBBYING AND LITIGATION - ALL RECIPIENTS

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

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

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

7. MANAGEMENT FEES

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

8. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE (PART 31)

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA, Grants Management Office prior to the budget/project period expiration dates. An interim FFR must be submitted along with the request which covers all expenditures and obligations to date.

9. RECYCLING AND WASTE PREVENTION

In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

10. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its approved EPA budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at is own risk. **The recipient is responsible for ensuring that projects funded under this agreement avoid unnecessary delays and are completed within the EPA approved budget.**

11. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after

receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. **For fiscal periods 2002 to 2007 recipients are to submit hard copy to the following address:**

Federal Audit Clearinghouse
1201 East 10th Street
Jeffersonville, IN 47132

For fiscal periods 2008 and beyond the recipient MUST submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions is available on the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/

12. SUBAWARD POLICY

a. The recipient agrees to:

(1) Establish all subaward agreements in writing;
(2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
(3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
(4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
(5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
(6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
(7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
(8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/omb/circulars/a133/a133.html.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

13. SUSPENSION AND DEBARMENT

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

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

Responsibility Matters."

14. TRAFFICKING VICTIM PROTECTION ACT OF 2000

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

15. CERTIFICATIONS

Prior to obligating funds for a particular project, recipient must (a) provide a certification from the Governor or Chief Environmental Executive, as appropriate, stating that (1) the infrastructure investment has received the full review and vetting required by law, and (2) the Governor or Chief Environmental Executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars; and (b) ensure that the certification is posted on a website and linked to www.recovery.gov. The certification shall include a description of the investment, the estimated total cost, and the amount of awarded funds to be used. For the purposes of this term and condition, "obligating funds" means entering into a contract requiring payment for specified goods or services or entering into a loan, reserving funds for a loan guarantee or bond issuance, or making a subaward (subgrant) of financial assistance.

16. SECTION 1512 REPORTING AND REGISTRATION REQUIREMENTS

Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
(b) The initial report is due by October 10, 2009. Thereafter, the reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

17. INSPECTOR GENERAL REVIEWS

In addition to the access to records provisions of 2 CFR 215.53 or 40 CFR 31.42, and in accordance with the provisions of section 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), recipient agrees to allow any appropriate representative of the Office of Inspector General to (1) examine any records of the recipient, any of its procurement contractors and subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the procurement contract, subcontract, grant or subgrant; and (2) interview any officer or employee of the recipient, subcontractor, grantee, subgrantee, or agency regarding such transactions.

The Grantee is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.

Recipient should be aware that the findings of any review, along with any audits, conducted by an Inspector general of a Federal department or executive Agency and concerning funds awarded under ARRA shall be posted on the inspector general's website and linked to www.recovery.gov, except that information that is protected from disclosure under sections 552 and 552a of title 5, United States Code may be redacted from the posted version.

18. PROTECTION OF WHISTLEBLOWERS

In accordance with section 1553 of the American Recovery and Reinvestment Act of 2009 (Act), recipient agrees that employees of non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an Inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

19. FALSE CLAIM The grantee, and its sub-grantees must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant or sub-grants awarded by the grantee.

20. PREFERENCE FOR QUICK-START ACTIVITIES

Recipient shall use funds in a manner that maximizes job creation and economic benefit. And, recipients using funds for infrastructure investment must give preference to funding activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than June 17, 2009.

21. LIMIT ON FUNDS

Recipient shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

22. Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009

Preamble

Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts (DB). Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon (DB) contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. RLF Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of DB requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, it may contact **Dorothy Rayfield at (404) 562-9278** for guidance. The Recipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/esa/whd/recovery/

1. Applicability of the Davis Bacon prevailing wage requirements.

For the purposes of this term and condition, EPA has determined that the 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, is subject to DB.

With regard to remediation of petroleum contamination, following consultation with the U.S. Department of Labor, EPA has determined that for remediation of petroleum contamination at brownfields sites, DB prevailing wage requirement apply when the project includes:

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,

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

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 cleanup activities at brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if a RLF Recipient encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before authorizing work on that site.

If an RLF Recipient encounters a unique situation at a petroleum or hazardous substance site that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before advising a borrower or subgrantee that DB does not apply.

2. Obtaining Wage Determinations.

(a) The RLF Recipient is responsible for obtaining DB wage determinations from DOL and ensuring the borrowers and subgrantees include the correct wage determinations in solicitations for competitive contracts by way of requests for bids, proposals, quotes or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments).

(b) Unless otherwise instructed by EPA on a project specific basis, the RLF Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. RLF Recipients must obtain wage determinations for specific localities at www.wdol.gov.

(i) For solicitations, new contracts and ordering instruments for the excavation and removal of hazardous substances, construction of caps, barriers and similar activities the RLF Recipient shall use the "Heavy Construction" Classification.

(ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment. and abatement or contamination in buildings (other than residential structures less than 4 stories in height) the RLF Recipient shall use "Building Construction" classification.

(iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient shall use "Residential Construction" classification.

(iv) For solicitations, new contracts and 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 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 the Recipient shall use the "Building Construction" classification.

(v) For solicitations, new contracts and 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 Recipient shall use the "Heavy Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with an RLF Recipient, EPA determines that DB applies to a unique situation involving a Brownfields site contaminated with petroleum (e.g. unusually extensive excavation) the Agency will advise the Recipient which General wage determination to use

based on the nature of the construction activity at the site.

(b) RLF Recipients shall include a term and condition is all loans and subgrants which ensures that the borrower or subgrantee complies with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The RLF Recipient must ensure that prime contracts entered into by borrowers and subgrantees contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the borrower or subgrantee's solicitation remains open, the RLF Recipient shall require that the borrower or subgrantee monitor www.wdol.gov, on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The RLF Recipient shall require that the borrower or subgrantee 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 RLF Recipient may, on behalf of the borrower or subgrantee, request a finding from EPA that there is not a 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 RLF Recipient.

(ii) If the borrower or subgrantee 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 RLF Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The RLF Recipient shall ensure that borrowers and subgrantees monitor www.wdol.gov on a weekly basis if the borrower or subgrantee does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current. If the applicable wage determination changes, the RLF Recipient shall provide the borrower or subgrantee with the current wage determination from www.wdol.gov.

(iii) If the borrower or subgrantee 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 RLF Recipient shall ensure that the borrower or subgrantee inserts the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c). RLF Recipients shall ensure that borrowers and subgrantees 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 a borrower or subgrantee's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the borrower or subgrantee 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 RLF Recipient shall require that the borrower or subgrantee 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 RLF Recipient must ensure that the borrower or subgrantee compensates the contractor for any increases in wages resulting from the use of DOL's revised wage determination. RLF Recipients may, but are not required to, provide additional loan or subgrant funds to the borrower or subgrantee for this purpose.

3. Contract and Subcontract Provisions.

(a) The RLF Recipient shall ensure that borrowers and subgrantees 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 RLF Recipient 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. RLF Recipients shall require that the contractor and subcontractors include the name of the RLF Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The RLF Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into by borrowers and subgrantees 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, upon the request or the RLR Recipient 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.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the RLF Recipient and the borrower or subgrantee 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 RLF Recipient 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.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, ***and the RLF Recipient and borrower or subgrantee*** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the RLF Recipient shall provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. 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 Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the RLF Recipient take appropriate action to implement the Administrator's determination.

(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 RLF Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause the borrower or subgrantee to withhold from the contractor under the affected 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 RLF Recipient 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 borrower or subgrantee and to the RLF Recipient 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 Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm 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 RLF Recipient 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 RLF Recipient.

(B) Each payroll submitted to the RLF Recipient 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.

(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.

(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, ***Recipient, borrower or subgrantee*** , 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 RLF Recipient, borrower or subgrantee 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 RLF Recipient shall ensure that subgrantees and borrowers*** 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 CFF 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 therefor 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 RLF Recipient shall upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the borrower or subgrantee, 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 RLF Recipient 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 RLF Recipient 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

Note: RLF Recipients may require that borrowers or subgrantees verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. RLF Recipients must ensure that borrowers and subgrantees understand the compliance verification requirements and can interpret prevailing wage determinations properly before placing the responsibility for compliance verification on borrowers or subgrantees. Moreover, the RLF Recipient remains accountable to EPA for ensuring that the borrowers' and subgrantees' contractors and subcontractors comply with DB.

(a). The RLF Recipient periodically interview, or require that borrowers or subgrantees 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)(6), all interviews must be conducted in confidence. The RLF Recipient 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 RLF Recipient shall establish and follow, or ensure that borrowers or subgrrantees 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 RLF Recipient, or the borrower or subgrantee, 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. RLF Recipients, or borrowers or subgrantees, 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 . RLF Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a borrower or subgrantee. All interviews shall be conducted in confidence.

(c). The RLF Recipient shall conduct, or require that borrowers or subgrantees 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 RLF Recipient shall establish and follow, or ensure that borrowers or subgrantees follow, a spot check schedule based on an 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 RLF Recipient must spot check, or require that borrowers or subgrantees 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. RLF Recipients must conduct, or require that borrowers or subgrantees 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 RLF Recipient shall verify, or require that borrower or subgrantees verify, evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The RLF Recipient shall periodically review, or require that borrowers or subgrantees 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) RLF Recipients must immediately report, or require that borrowers or subgrantees 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
http://www.dol.gov/esa/contacts/whd/america2.htm

23. BUY AMERICAN

Section 1605 Buy American Requirement – Iron, steel, and/or manufactured goods not covered under international agreements

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) **Definitions.** As used in this award term and condition—

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been--

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties,

breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference* .

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act)(Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material listed by the Federal Government. All "Buy American Waivers" are published in the Federal Register and published at http://www.epa.gov/recovery/.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting

data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of Measure	Quantity	Cost (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:	_____	_____	_____
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good			
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] **[Include other applicable supporting information.]** **[* Include all delivery costs to the construction site.]**			

Section 1605 Buy American Requirement – iron, steel, and/or manufactured goods covered under international agreements

Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

(a) **Definitions.** As used in this award term and condition—

"Designated country" --

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

"Designated country iron, steel, and/or manufactured goods" --

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

"Domestic iron, steel, and/or manufactured good" --

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured

good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

"Foreign iron, steel, and/or manufactured good" means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been--

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods* .

(1) This award term and condition implements

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.

(3) The requirement in paragraph (b)(2) of this term and condition does not apply to the iron, steel, and manufactured goods listed by the Federal Government. All "Buy American Waivers" are published in the Federal Register and published at http://www.epa.gov/recovery/.

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this award term and condition if the Federal government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured goods is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph(b)(4) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;
(F) Location of the project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to the section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of Measure	Quantity	Cost (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:	_____	_____	_____
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good			
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] **[Include other applicable supporting information.]** **[* Include all delivery costs to the construction site.]**			

24. Transparency and Accountability – Single Audit Information for Recipients of Recovery Act Funds

Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)(Recovery Act) as required by Congress and in accordance with 2 CFR 215, subpart ___. 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

25. PAYMENT TO CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2009, the limit is $587.20 per day and $73.40 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

26. OMB GUIDANCE

This award is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

27. ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS

Not later than 45 days after the enactment of ARRA and prior to receiving funds, Recipient must affirm that either (1) the State Governor has certified that the State will request and use funds provided by the Act and the funds will be used to create jobs and promote economic growth, or (2) if funds are not accepted for use by the Governor of the State, the State legislature has accepted the funds by means of adopting a concurrent resolution. After a State legislature's concurrent resolution, funding within the State shall be distributed to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

28. The Grantee is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.

29. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, air share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement is $250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** as follows:

MBE: CONSTRUCTION 9%; SUPPLIES 9%; SERVICES 9%; EQUIPMENT 9%
WBE: CONSTRUCTION 3%; SUPPLIES 3%; SERVICES 3%; EQUIPMENT 3%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to:

EPA GRANTS MANAGEMENT OFFICE
61 FORSYTH STREET, SW
ATLANTA, GA 30303

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp .

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

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

30. This project receives funding under the American Recovery and Reinvestment Act of 2009 (ARRA) and the grantee, sub-grantee or loan recipient must display the ARRA Logo in a manner that informs the public that the project is an ARRA investment. The ARRA logo may be obtained from the EPA grants office listed in this award document. If the EPA logo is displayed along with the ARRA logo and logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the grantee, sub-grantee or loan recipient received financial assistance from EPA for the project.

31. Recipients and subrecipients of Recovery Act funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on recipients and subrecipients. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

For questions about these civil rights obligations, please call the EPA's Office of Civil Rights at 202-564-7272 or contact us via e-mail: http://www.epa.gov/civilrights/comments.htm.

32. PRE-AWARD COSTS FOR RECOVERY ACT GRANTS TO STATE AND LOCAL GOVERNMENTS SUBJECT TO 40 CFR PART 31 OTHER THAN CLEAN WATER OR DRINKING WATER STATE REVOLVING FUND CAPITILIZATION GRANTS AND SUPERFUND COOPERATIVE AGREEMENTS

In accordance with 2 CFR Part 225, Appendix B, Item 31, costs the recipient incurred up to 90 days prior to award that were negotiated with EPA in anticipation of the award, including preparing for expending funds made available by the American Recovery and Reinvestment Act, and are necessary to comply with the schedule for delivering work products during the period of performance are allowable provided the costs:

1. Are eligible under the statutory authority for the award and are otherwise allowable under 2 CFR Part 225, and;
2. Are for activities described in the EPA approved scope of work and included in the EPA approved budget, and;
3. Were incurred in compliance with the procurement provisions of 40 CFR Part 31, 40 CFR Part 33, and if applicable, 40 CFR Part 35, Subpart O, and;

4. Were not incurred for activities directly related to a casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, and;
5. Further the goals of the American Recovery and Reinvestment Act to create and preserve jobs, promote economic recovery, and invest in environmental protection, and;
6. Are in compliance with the applicable provisions of the American Recovery and Reinvestment Act.

Programmatic Conditions

Please see attached 2009 Brownfields American Recovery and Reinvestment Act (ARRA) Terms and Conditions.

2009 Brownfields American Recovery and Reinvestment Act (ARRA)
Terms and Conditions-Region 4
Supplemental RLF

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients

a. By awarding this cooperative agreement, EPA has approved the proposal the Cooperative Agreement Recipient submitted in the Fiscal Year 2009 competition for Brownfields RLF cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final Work Plan.

b. In implementing this agreement, the cooperative agreement recipient (CAR) shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

c. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

d. This award is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget (OMB), including the Updated Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on April 3, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

2. Borrowers and Subgrant recipients:

a. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal

sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions recipients of subgrants.

b. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon Act requirements see the Davis- Bacon administrative T&C.

c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

d. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 33;OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

B. Eligible Brownfields Site Determinations

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks,

greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

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

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

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

4. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

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

6. EPA must also make all determinations on the eligibility of petroleum contaminated brownfields sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact EPA Project Officer and provide the information necessary for EPA to make the determinations described in 3.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. **Term of the Agreement**

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.

2. If after 1 year from date of award, EPA determines that the recipient has not made sufficient progress in implementing its RLF, EPA may terminate the agreement. The CAR should note that in order to ensure adequate review time, the review of sufficient progress could begin as early as September 30, 2010 and the CAR must report on sufficient progress no later than October 30, 2010. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

B. **Substantial Involvement**

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

   a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review and approval of procedures for loan and subgrant recipient selection; review of project phases; and approval of substantive terms included in professional services contracts.

   b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA on which sites qualify as a brownfields site and when determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. Generally, this prohibition prohibits a grant or loan recipient from using grant funds to cleanup a site if the recipient is potentially liable under §107 of CERCLA for that site.

   c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

   d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.

   e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

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

   b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.

   c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.

   a. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.

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

D. Recovery Act Quarterly Progress Reports

1. The CAR must report in three different areas on Recovery Act funds.

   a. First, the CAR **(and any sub-recipients)** must report in www.FederalReporting.Gov within ten calendar days after the end of each calendar quarter (Recovery Act Section 1512 reporting requirements). The first report is due on October 10, 2009. FederalReporting.Gov is a Government-wide system, managed by OMB, which will collect information on the use of Recovery Act funds from all Recovery Act fund recipients and their sub-recipients. For more information on the

requirements for FederalReporting.gov please see Brownfields Administrative Term & Condition #25.

b. Second, the CAR must report on interim progress and any final accomplishments by completing and submitting relevant portions of the Property Profile Form (e.g., reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities, institutional controls, contaminants, and reuse). The CAR must submit the updated Property Profile Form reflecting such events as soon as the accomplishment has occurred, or within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR will be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at: http://www.epa.gov/brownfields/pubs/rptforms.htm.

c. Third, the CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:

i. Documentation of progress at meeting performance outcomes/outputs, project narrative, project time line and an explanation for any slippage in meeting established output/outcomes (see D.1.d. below for specifics).

ii. An update on project milestones.

iii. A budget recap summary page with the following headings: (A) Current Approved Recovery Act Budget; (B) Recovery Act Costs Incurred this Quarter; (C) Recovery Act Costs Incurred to Date; and (D) Total Remaining Recovery Act Funds..

iv. If applicable, quarterly reports must specify costs incurred at petroleum contaminated brownfields sites.

d. Quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the workplan including a list of sites where cleanup (either through loans or subgrants) activities were completed. To the extent consistent with the workplan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting include:

1. Date of loan or subgrant (interim measure to show grant progress before actual cleanup work begins)

2. Acres per property(ies)
3. Cleanup completed
4. Types of contaminants cleaned up
5. Acres of greenspace created
6. Engineering/institutional controls required, type, and whether they are in place
7. Redevelopment underway
8. Number/value of loans made
9. Number/value of subgrants made
10. Funds leveraged
11. Jobs leveraged *
12. Health monitoring studies, insurance, and/or institutional controls funded

* Reporting requirements for "jobs leveraged" differs from reporting on jobs created and retained under Term and Condition D.1.a. Please see EPA's Frequently Asked Questions on Brownfields Recovery Act grants at (web site) or contact your project officer for additional guidance.

2. The CAR must maintain records that will enable it to report to EPA on the amount of Recovery Act funds expended by the CAR, borrowers or subgrant recipients at petroleum sites.

3. In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement workplan.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.

    a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at petroleum-only brownfields sites.

    b. The funds must be used by the CAR to provide loans or subgrants for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Note: Cleanup subgrants are limited to $200,000 per site. The CAR may petition

EPA to waive the $200,000 per site subgrant limitation, if such a waiver would promote the goals of the Recovery Act through increased job creation, retention, and economic development.

c. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed $200,000. The entities eligible for discounted loans are provided below.

d. To determine whether a cleanup subgrant is appropriate, the CAR must consider:

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

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

   iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and

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

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

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:

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

   b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);

c. Ensuring that public participation requirements are met. This includes developing or funding a community relations plan which will include reasonable notice, opportunity for involvement, and response to comments;

d. Establishing an administrative record for each site;

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

f. The development of Quality Assurance Project Plans (QAPPs) as required by Part 31 and Part 30 regulations;

g. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;

h. Preparing an analysis of brownfields cleanup alternatives 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, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;

i. For petroleum sites, an analysis of cleanup alternatives would include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures;

j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section D.

k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and

l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.

3. **Local Governments Only:** No more than 10% of the funds awarded by this agreement may be used by the CAR itself for monitoring of health and institutional controls. The CAR must maintain records on funds that will be used to carry out these tasks as identified in the EPA-approved Work Plan.

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

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

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:

   a. To fund particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

   b. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.

   c. 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.

   d. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use;

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

   f. To pay for a penalty or fine.

   g. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.

   h. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA §107.

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

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

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

   a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.

   b. Ineligible grant or subgrant administration costs include direct costs for:a.

      i. Preparation of applications for Brownfields grants and subgrants;

      ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;

      iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;

      iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;

      v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;

      vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;

      vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and

      viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.

      ix. Borrowers are subject to the CERCLA 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees from using loans financed with cooperative agreement funds for administrative costs.

c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.

d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

i. Preparation of applications for loans and loan agreements;

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

iii. Maintaining and operating financial management and personnel systems;

iv. Preparing payment requests and handling payments; and

v. Audits.

vi. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:

vii. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);

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

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

x. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.

xi. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

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

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

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

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

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

4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fess or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

D. Subgrant Recipient and Borrower Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA 104(k)(1) and non profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

   a. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**

   b. The CAR may discount loans for those eligible entities identified in CERCLA section 104(k)(1) and non profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management

Improvement Act of 1999. This definition includes non profit universities and other non profit educational institutions. **Private, for-profit entities are not eligible for discounted loans.**

c. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA §107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.

d. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed r disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and took reasonable steps with regard to the contamination at the site.

e. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.

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

g. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

E. Obligations for Grant Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA §107

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:

a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.

b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be:

i. potentially liable, or affiliated with any other person that is potentially liable,

ii. for response costs at the facility through (a) any direct or indirect familial

iii. relationship; or (b) any contractual, corporate, or financial relationships; or

iv. a reorganized business entity that was potentially liable or

v. otherwise liable under CERCLA §107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

ii. taking reasonable steps with respect to hazardous substance releases;

iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;

iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

2. Use of Program Income

a. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

For Transitioned RLFs

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

c. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

d. The CAR that elects to use program income to cover all or part of a RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.

e. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct

funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.

f. CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

H. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

2. Interest-Bearing Accounts

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

   b. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.

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

IV. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives 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, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.

2. For cleanup of petroleum sites, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of

contaminant sources, exposure pathways, and an evaluation of corrective measures. The clean up method chosen must be based on this analysis.

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

B. Quality Assurance (QA) Requirements

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) 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.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

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

2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the

appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of a RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

V. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

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

2. Any expenditure incurred by the CAR prior to EPA approval of the Work Plan must be consistent with the approved Work Plan in order to be reimbursed by EPA. The CAR shall ensure that the objectives of the Work Plan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

   a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.

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

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

   d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF

application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

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

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

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

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

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:

   a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.

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

   c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).

   d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants

supported with RLF funds to authorized representatives of the Federal government.

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

f. Borrowers or subgrant recipients shall certify that they are not potentially liable under §107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.

h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

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

interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

a. The affected party,

b. Any member of his immediate family,

c. His or her partner, or

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

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

VI. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply:

1. "**Payment**" is the U.S. EPA's transfer of funds to the CAR.

2. The CAR incurs an "**obligation**" when it enters into a loan agreement with the borrower or subgrant recipient.

3. "**Disbursement**" is the transfer of funds from the CAR to the borrower or subgrant recipient.

4. "**Close out**" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR.§31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred

costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA.

B. Methods of Disbursement

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

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

    b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (e.g., progress payments) or, in unusual circumstances, upon execution of the loan. The CAR shall submit documentation of disbursement schedules to EPA.

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

    d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

    e. The CAR may negotiate a predetermined schedule(s) for disbursement to subgrant recipients provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant recipient's payment of costs incurred in carrying out the subgrant.

    f. If the disbursement schedule of the subgrant calls for disbursement of the entire amount of the subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the subgrant. Further, the CAR shall include an appropriate provision in the subgrant agreement which ensures that the subgrant recipient uses funds promptly

for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

C. Schedule for Closeout

1. There are two fundamental criteria for closeout:

    a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and

    b. Completion of all cleanup activities funded by the amount of the award.

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.

3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include: continuing to operate a RLF for brownfields cleanup and/or other brownfields activities.

4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA Section 107 prohibitions and site eligibility limitations contained within these Terms and Conditions.

D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award amended to reflect the reduced amount of the cooperative agreement.

E. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

F. Loan Guarantees

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

    a. The CAR shall:

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

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

        iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA 104(k) and applicable Federal and State laws and will protect human health and the environment.

    b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower or subgrant recipient (See Section on Methods of Disbursement). The CAR's escrow arrangement shall be structured to ensure that the CERCLA §104(k) funds are properly "disbursed" by the recipient for the purposes of the assistance agreement as required by 40 CFR §31.20(b)(7) and §31.21(c). If the funds are not properly disbursed, the CERCLA §104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 40 CFR §31.21(i).

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

        i. the recipient cannot retain the funds;

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

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

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

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

d. Federal Obligation to the Loan Guarantee Program

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

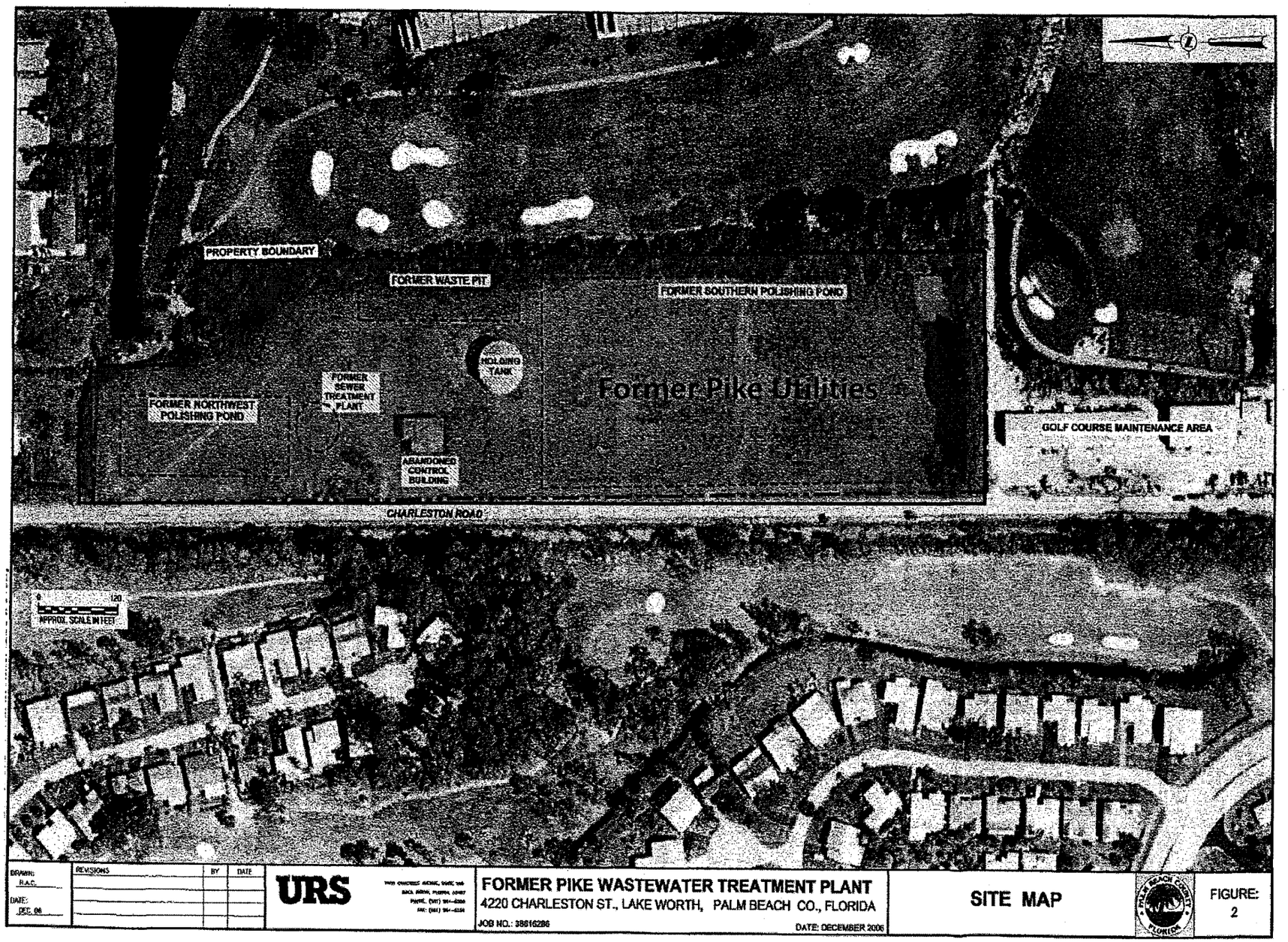
e. Repayment of Guaranteed Loans

i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA. Alternatively, the CAR may, with EPA approval,

1) Guarantee additional loans under the terms and conditions of the agreement or,

2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities.

Attachment 3



DRAWN: R.A.C.	REVISIONS	BY	DATE
DATE: DEC. 06			

URS

FORMER PIKE WASTEWATER TREATMENT PLANT
4220 CHARLESTON ST., LAKE WORTH, PALM BEACH CO., FLORIDA
JOB NO.: 38616286 DATE: DECEMBER 2006

SITE MAP

FIGURE: 2