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|  | U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement | | GRANT NUMBER (FAIN): 00A00902 MODIFICATION NUMBER: 0 PROGRAM CODE: 4W | DATE OF AWARD 01/24/2023 | |
| | | | TYPE OF ACTION New | | MAILING DATE 01/27/2023 |
| | | | PAYMENT METHOD: ASAP | | ACH# 10102 |
| | | | RECIPIENT TYPE: State | | Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov |
| RECIPIENT: Environmental Protection Maine Department of 28 Tyson Drive Augusta, ME 04333 EIN: 01-6000001 | | | PAYEE: Maine DEP 28 Tyson Drive Augusta, ME 04333 | | |
| PROJECT MANAGER Nicholas Hodgkins 17 State House Station 28 Tyson Drive Augusta, ME 04333-0017 Email: nick.hodgkins@maine.gov Phone: 207-592-0882 | | EPA PROJECT OFFICER William Lariviere 5 Post Office Square, Suite 100 Boston, MA 02109-3912 Email: Lariviere.William@epa.gov Phone: 617-918-1231 | | EPA GRANT SPECIALIST Katonya Parker US EPA Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912 Email: Parker.Katonya@epa.gov Phone: 617-918-1967 | |
| PROJECT TITLE AND DESCRIPTION FY2022 MAINE DEP BROWNFIELDS BIL GRANT APPLICATION UNDER CERCLA SEC. 128(a) See Attachment 1 for project description. | | | | | |
| BUDGET PERIOD 01/01/2023 - 09/30/2027 | PROJECT PERIOD 01/01/2023 - 09/30/2027 | TOTAL BUDGET PERIOD COST \$4,490,000.00 | TOTAL PROJECT PERIOD COST \$4,490,000.00 | | |
| <h3 style="text-align: center;">NOTICE OF AWARD</h3> <p>Based on your Application dated 09/30/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$890,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$890,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p> | | | | | |
| ISSUING OFFICE (GRANTS MANAGEMENT OFFICE) | | AWARD APPROVAL OFFICE | | | |
| ORGANIZATION / ADDRESS U.S. EPA, Region 1, EPA New England 5 Post Office Square, Suite 100 Boston, MA 02109-3912 | | ORGANIZATION / ADDRESS U.S. EPA, Region 1, EPA New England R1 - Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912 | | | |
| THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY | | | | | |
| Digital signature applied by EPA Award Official Arthur Johnson - Director of MSD | | | | DATE 01/24/2023 | |

Budget Summary Page

| Table A - Object Class Category (Non-Construction) | Total Approved Allowable Budget Period Cost |
|--|--|
| 1. Personnel | \$510,603 |
| 2. Fringe Benefits | \$306,361 |
| 3. Travel | \$15,000 |
| 4. Equipment | \$32,000 |
| 5. Supplies | \$7,000 |
| 6. Contractual | \$2,803,074 |
| 7. Construction | \$0 |
| 8. Other | \$10,000 |
| 9. Total Direct Charges | \$3,684,038 |
| 10. Indirect Costs: 0.00 % Base | \$805,962 |
| 11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %) | \$4,490,000 |
| 12. Total Approved Assistance Amount | \$4,490,000 |
| 13. Program Income | \$0 |
| 14. Total EPA Amount Awarded This Action | \$890,000 |
| 15. Total EPA Amount Awarded To Date | \$890,000 |

Attachment 1 - Project Description

EPA's CERCLA Section 128(a) grant program funds activities that establish or enhance the capacity of state and tribal response programs. The goals of this funding are to provide financial support for the elements of an effective state or tribal response program, as specified in CERCLA Section 128, and to ensure that states and tribes maintain a public record of sites included in their programs. The Infrastructure Investment and Jobs Act ("IIJA") provided additional funding to carry out the Section 128(a) grant program. The purpose of this award is to enhance the capacity of Maine DEP brownfields response program to meet the Section 128(a) elements. Maine DEP will oversee and perform planning, assessment, and cleanup of brownfields sites throughout the state. Maine DEP will perform the following activities: timely survey and inventory of brownfield sites, which are properties whose expansion, redevelopment, or reuse may be complicated by the presence of hazardous substances. It also includes oversight and enforcement authorities to ensure that response actions protect human health and the environment; resources to provide meaningful public involvement; mechanisms for approval of cleanup plans, and verification of complete responses. The objective of this project is to assist in remediating and reusing brownfields sites throughout the state. Maine DEP will expand public education and outreach of the Maine DEP Voluntary Cleanup Program to underserved communities, 10 Phase I's, 8 Phase II's, and 5 cleanups per year, along with the necessary Site Specific Quality Assurance Project Plans (SSQAPP), Analysis for Brownfield Cleanup Activities (ABCA) and Community Relation Plans (CRP). No subawards are included in this assistance agreement.

Administrative Conditions

National Administrative Terms and Conditions

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later>.

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

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

A. Correspondence Condition

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

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov
- MBE/WBE reports (EPA Form 5700-52A): **Grants Specialist on Page 1 of Award Document AND Larry Wells, Disadvantaged Business Utilization Program Manager: r1_mbewbereport@epa.gov**
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: **Grants Specialist and Project Officer on Page 1 of Award Document**
- Workplan revisions, equipment lists, programmatic reports and deliverables: **Project Officer on Page 1 of Award Document**
- Quality Assurance documents, **Project Officer on Page 1 of Award Document AND R1QAPPs@epa.gov**

B. Contingent Funding

EPA is funding this agreement incrementally. There is no guarantee of funding beyond the first year. The **Total Approved Assistance Amount** identified on Line 12 of the budget table of this award is contingent upon the availability of appropriated funds, EPA funding priorities, and satisfactory progress in carrying out the activities described in the scope of work. If EPA informs the recipient that the amount on Line 12 will be reduced, the recipient agrees to provide an updated workplan and budget information, as needed, to amend the agreement.

C. Pre-Award Costs

In accordance with 2 CFR 1500.9, the recipient may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from **1/1/2023** to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

Programmatic Conditions

**CERCLA SECTION 128(a) STATE AND TRIBAL RESPONSE
PROGRAM**

FY22 INFRASTRUCTURE INVESTMENT AND JOBS ACT (“IIJA”) FUNDING

**GRANT-SPECIFIC PROGRAMMATIC
TERMS AND CONDITIONS**

Due to the budget accounting, tracking, and reporting requirements for the Infrastructure Investment and Jobs Act (“IIJA”) funding, Section 128(a) cooperative agreements funded with IIJA money must be awarded separately from Section 128(a) cooperative agreements with annual appropriated funds. In the same vein, Section 128(a) IIJA funds are not eligible to be included in Performance Partnership Grants (“PPGs”) under 40 CFR Part 35 Subparts A and B. This restriction is intended to ensure that Section 128 Cooperative Agreement Recipients (“CARs”) can effectively track, account for, and report on the use of IIJA funding.

If a CAR has two FY22 Section 128(a) Cooperative Agreements (one with annual appropriated funds and one with IIJA funds), the two awards must clearly delineate what activities will utilize annual appropriation funds versus IIJA funds. CARs must work closely with EPA Project Officers to ensure that there is no duplication of work funded by the two sources of funding.

I. **Response Program Elements:** The CAR must demonstrate that it is taking reasonable steps to include, or has already included in its response program, the four elements identified in CERCLA Section 128(a)(2).

II. **Substantial Involvement:** This is a cooperative agreement that will entail substantial

involvement by EPA to the extent Agency resources permit. Substantial EPA involvement includes:

A. Consultation and collaboration on technical and policy matters at the CAR's request. EPA's Project Officer or designee may provide data, advice, and information that will help the CAR carry out the agreement effectively;

B. EPA's Project Officer may review the substantive terms of professional services contracts or subawards the CAR enters into to carry out specific elements of the scope of work. Neither EPA's Project Officer nor any other EPA employee will direct, recommend, or suggest that the CAR enter into a contract or subaward with a specific entity. EPA approval is not required for contracts for supplies, equipment, information technology and other administrative support services;

C. EPA's Project Officer may review the qualifications of key staff hired by the CAR or consultants with whom the CAR contracts to carry out specific elements of the scope of work when those staff or contractors are paid by the grant funds. Neither EPA's Project Officer nor any other EPA employee will direct, recommend, or suggest that the CAR hire a particular individual or enter into a consulting contract with a specific entity;

D. Monitoring by EPA of the CAR's performance under the agreement; and

(NOTE: EPA's Project Officer may waive or modify its substantial involvement on any particular matter or classes of matters through written advice to the CAR.)

III. Public Record System: The CAR must establish a public record system pursuant to CERCLA Section 128(b)(1)(C). The public record must be maintained and updated at least annually and include the requirements listed below.

A. For sites where response actions were completed in the previous grant project year, include the following:

1. Date the response action was completed;

2. Site name, name of owner at time of cleanup, and type of site (e.g., petroleum, methamphetamine laboratory, mine scarred lands);

3. Location of the site (street address, latitude and longitude);

4. Explanation of whether or not the site will be suitable for unrestricted use upon completion of the response action. If not, the public record must identify and describe the institutional control(s) in place or relied on for the remedy (e.g., deed restriction);

5. Nature of the contamination at the site (e.g., hazardous substances, contaminants, pollutants, petroleum contamination, etc.); and

6. Size of the site in acres.

B. A list of sites planned to be addressed in the next year by the state or tribal response program including:

1. Site name, name of owner at time of cleanup, and type of site (e.g., petroleum, methamphetamine laboratory, mine scarred lands);

2. Location of the site (street address, latitude and longitude);

3. To the extent known, whether an institutional control is in place. If so, describe the type of institutional control in place (e.g., deed restriction);

4. To the extent known, the nature of the contamination at the site (e.g., hazardous substances, contaminants, pollutants, petroleum contamination, etc.); and

5. Size of the site in acres.

C. Once a public record is established in a manner consistent with CERCLA Section

128(b)(1)(C), CARs must maintain the public record throughout the duration of this agreement.

IV. Site-Specific Assessment and Cleanup Activities:

A. Consistent with CERCLA Section 128(a)(2)(C)(iii), EPA guidance, and to the extent authorized by the scope of work for this agreement, the CAR may conduct assessments or cleanups at sites that meet the definition of a brownfield site at CERCLA Section 101(39) in response to a request by a person who is or may be affected by a release or threatened release of a hazardous substance, pollutant, contaminant, or petroleum at a brownfield located in the community in which the person works or resides. Assessments and cleanups must comply with all applicable laws and are subject to the following restrictions:

1. Absent approval by EPA's Project Officer, no more than \$250,000 per site can be funded for assessments, and no more than \$250,000 per brownfield site can be funded for cleanups. *This per-site cap includes the FY22 funding that a CAR has already been allocated from FY22 Section 128(a) Annual Appropriation funds; it does not add an additional \$250,000 on top of the \$200,000 cap from the previous award. If the CAR's FY22 workplan for a CERCLA 128 grant funded with annual appropriated funds addresses a site assessment or cleanup and has reached the previous cap of \$200,000, the CAR may add \$50,000.*

2. Absent approval by EPA's Project Officer, the CAR may not use funds awarded under this agreement to assess and/or cleanup brownfields owned by the CAR or held in trust by the United States Government for the CAR.

4. Assessments and cleanups may not be conducted at brownfields where the CAR is a potentially responsible party ("PRP") pursuant to CERCLA Section 107, except when the CAR acquired the property before January 11, 2002, and has not caused or contributed to a release or threatened release of a hazardous substance at the property.

B. Consistent with CERCLA Section 128(a)(2)(B)(ii), and to the extent authorized by the scope of work for this agreement, the CAR may use funds awarded under this agreement to complete the necessary response activities, including assessments and cleanups, if the

person conducting a response action overseen by the CAR fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities. Assessments and cleanups under this provision must comply with all applicable laws and are subject to the following restrictions:

1. Absent approval by EPA's Project Officer, the CAR may not use funds awarded under this agreement to assess and cleanup sites owned by the CAR.

2. The CAR may not use funds awarded under this agreement to assess or cleanup sites for which the CAR is a potentially responsible party (pursuant to CERCLA Section 107), with the exception of sites contaminated by a controlled substance as defined in CERCLA Section 101(39)(D)(ii)(I).

C. For the site-specific activities under paragraphs III.A. and III.B., the CAR must maintain documentation supporting the CAR's conclusion that the site meets the brownfield definition in CERCLA Section 101(39). For those sites which are excluded from the brownfield definition, pursuant to CERCLA Section 101(39)(B), but are eligible for a property-specific funding determination pursuant to CERCLA Section 101(39)(C), the CAR must comply with paragraph IV below. NOTE: To the extent authorized in the scope of work for this agreement, the CAR may conduct oversight of cleanups at sites other than brownfields. Records must be maintained per 2 CFR 200.334.

D. For site-specific activities at petroleum-only brownfields sites (CERCLA Section 101(39)(D)(ii)(II)), the requirements listed below apply.

1. The CAR must determine and maintain supporting documentation that:

- a) There is no viable responsible party for the site;

- b) The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site; and

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

2. The supporting documentation must identify the state official who made the determinations identified in D.1., the date the CAR obtained the determinations, and a summary of each conclusion.

E. Site-specific Activity Funding Limit: The amount requested for site-specific assessments and cleanups **may not exceed 75%** of the total amount of Section 128(a) funding awarded to the CAR during FY 2022. This 75% cap includes the FY22 funding that the CAR received from the FY22 Section 128(a) Annual Appropriation funds plus the FY22 funding that the CAR is receiving in FY22 IIJA funds. *[Note: Oversight of assessment and cleanup activities performed by responsible parties (other than the state or tribe) does not count toward the 75% limit. The 75% cap also does not include personnel or supplies/equipment purchased in support of site-specific work.]*

A CAR may submit to the EPA Project Officer a written request for a waiver to exceed the 75% of annual funding for site-specific activities, as described under Section III A-D. The EPA Project Officer will review the waiver request and make a recommendation to EPA's Office of Brownfields and Land Revitalization, who will determine if the requested waiver is approved. The EPA Project Officer will notify the CAR of EPA's determination.

The CAR's written waiver request submitted to the EPA Project Officer must include a brief justification describing the reason(s) for spending more than 75% of their FY22 total allocation [which includes the FY22 funding that the CAR received from the FY22 Section 128(a) Annual Appropriation funds plus the FY22 funding that the CAR is receiving in FY22 IIJA funds] on site-specific activities and must include the following information:

1. Provide the percentage of the eligible brownfield site-specific activities (assuming waiver is approved) in the CAR's total FY22 budget;
2. List all site-specific activities that will be covered by this funding. If known, provide site-specific information and a description of how work on each site contributes to the establishment or enhancement of your state/tribal response program. EPA encourages states and tribes to use site-specific funding to perform assessment and cleanup activities that will expedite the reuse and redevelopment of sites, and prioritize sites based on need. Further explain how the community will be (or has been) involved in prioritization of site work and especially those sites where there is a potential or known significant environmental impact to the community;

3. Explain how this shift in funding will not negatively impact the core programmatic capacity (i.e., the ability to establish/enhance four elements of a response program) and how it will be maintained in spite of an increase in site-specific work. Grantees must demonstrate that they have adequate funding from other sources to effectively carry out work on the four elements for EPA to grant a waiver of the 75% limit on using 128(a) funds for site-specific activities;
4. Describe how this shift in funding towards site-specific work is appropriate for your response program; and
5. Explain whether the sites to be addressed are those for which the affected community/ies has/have requested work be conducted.

V. Property-Specific Funding Determinations:

A. If a CAR plans to use funds for site-specific activities at a site that is excluded from the definition of a brownfield in CERCLA Section 101(39)(A) and (B) but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA's Regional Approval Official, as delegated by Delegation 14-44 and 14-45, to make a property-specific funding determination. Sites eligible for property-specific funding are defined in CERCLA Section 101(39)(C). The CAR must comply with the following requirements:

1. The CAR must not incur any site-specific costs for those sites which require a property-specific funding determination under this agreement (other than those necessary to provide information to EPA) until EPA's Approval Official makes a property-specific funding determination.
2. The CAR must submit to EPA's Project Officer a written request for a property-specific funding determination. The request must include information about the site (e.g., name, location, owners) and explain how the financial assistance will:

a) Protect human health and the environment, and

b) 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.

B. Any property-specific funding determination granted by EPA does not obviate the CAR's responsibility to incur only costs that meet the terms and conditions of the agreement and are allowable under 2 CFR Parts 200 and 1500 for governmental entities.

VI. Institutional Controls: To the extent authorized by the scope of work for this agreement, the CAR may use funding under this agreement to maintain and monitor institutional controls.

VII. Grant Performance Reporting Requirements:

A. Performance Reporting Requirements for Program Activity Levels ("PALs")

CARs must report Program Activity Levels ("PALs") **once** annually when the Section 128(a) funding request is due to the appropriate EPA Regional Office in mid-December. CARS **are not** required to provide two separate PALs reports for FY22. PALs summarize the work from the previous federal fiscal year, therefore, CAR's *responses to the PALs questions should reflect activities for the period covering the last federal fiscal year (October 1 – September 30)*, including:

1. Environmental programs where CERCLA 128(a) funds are used to support capacity building [general program support, non-site-specific work]. Specify which programs were supported with 128(a) funds from the following: Brownfields, Underground Storage Tanks/Leaking Underground Storage Tanks, Federal Facilities, Solid Waste Superfund, Hazardous Waste Facilities, VCP (Voluntary Cleanup Program, Independent Cleanup Program, etc.), and Other;

2. Number of properties (or sites) enrolled in a response program during previous federal fiscal year;

3. Number of properties (or sites) where documentation indicates that cleanup work is complete AND either (a) all required institutional controls (IC's) are in place, or (b) the cleanup does not require ICs;
4. Total number of acres associated with properties (or sites) in the previous question (Question #3);
5. OPTIONAL: Number of properties (or sites) where assistance was provided, but the property was not enrolled in a response program;
6. Date that the public record was last updated;
7. Number of audits/inspections/reviews/other conducted to ensure engineering controls and institutional controls are still protective; and
8. Did you develop or revise legislation, regulations, codes, guidance documents or policies related to establishing or enhancing your Voluntary Cleanup Program/Response Program during FY21? If yes, please indicate the type and whether it was new or revised.

For FY22, CARs must report PALs information either directly in [EPA's Assessment, Cleanup and Redevelopment Exchange System \("ACRES"\) database OR by filling out the form found at <https://www.epa.gov/brownfields/program-activity-levels-pals-reporting-form>](https://www.epa.gov/brownfields/program-activity-levels-pals-reporting-form) and providing it to the appropriate EPA Regional Office along with the CAR's FY23 funding request in mid-December.

Beginning in FY23, CARs will only be able to provide PALs information directly into ACRES.

For detailed instructions on how to report PALs in ACRES, please see the quick reference guide at <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange>.

B. Semi Annual Performance Reporting Requirements: CAR agrees to provide performance reports semiannually. The reports will be due no later than 30 calendar days after the reporting period.

1. All interim and final progress reports must prominently display the following three relevant Essential Elements as reflected in the current EPA strategic plan:

a) Strategic Plan Goal 6: Safeguard and Revitalize Communities

b) Strategic Plan Objective 6.1: Clean Up and Restore Land for Productive Uses and Healthy Communities

c) Work plan Commitments and Timeframes: See work plan for specifics.

2. The CAR will report on milestones, activities, and outputs achieved under this agreement. Examples of items to include:

a) The completion of significant site planning, assessment, cleanup, or redevelopment activities, including any relevant information regarding whether such activities anticipated or otherwise considered the impacts of climate change and/or benefited a community with environmental justice concerns. [The EPA describes environmental justice (“EJ”) as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. For example, an “underserved community” refers to a community with environmental justice concerns and/or vulnerable populations, including low-income citizens, communities of color, and tribal and Indigenous peoples.];

b) Information regarding significant outreach, meeting, or training events, including whether such outreach engaged communities with environmental justice concerns;

c) Significant updates to a website or tracking system or improvements to the

process;

d) For site-specific work, details such as where and when the activity was conducted and why, who was involved or impacted, and what was accomplished, including whether site-specific work anticipated or otherwise considered the impacts of climate change and/or benefited a community with environmental justice concerns. The narrative may range in length between a paragraph and one page in length for a specific site. Provide before and after photos of site work and photos of events, unless the site assessment report already has been provided to EPA as a deliverable.

e) A budget summary table which may include the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.

3. All CARs must report information relating to establishing and maintaining the public record described in paragraph II above and provide the date of the last update. (NOTE: For this requirement, CARs can refer to their already existing public record, such as a website or other public database).

4. CARs with work plans that include funding for other site-related activities must include a description of the activities and provide the number of sites at which the activities were conducted. For example:

a) Number and frequency of oversight reviews (internal audits) of licensed site professional certified cleanups.

b) Number and frequency of state/tribal oversight reviews (internal audits) conducted.

c) Number of sites where staff conducted reviews (internal audits), provided technical assistance, or conducted other oversight activities.

d) Number of staff conducting oversight reviews (internal audits), providing

technical assistance, or conducting other oversight activities.

5. CARs must report activities related to establishing or enhancing the four elements of the state or tribe's response program:

a) For each element, CARs must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual CAR work plans. For example, pursuant to CERCLA Section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element may include:

(1) A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:

(a) Legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements);

(b) Cleanup standards for soil and water; and

(c) Policies and procedures to implement legal authorities; and

(d) Other mechanisms;

(2) A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the grant;

(3) A narrative description of how these authorities or other mechanisms and resources are adequate to ensure that:

(a) A response action will protect human health and the environment and be conducted in accordance with applicable

laws; and

(b) A response action will be completed if the person conducting the response action fails to conduct the necessary response activities, including operation and maintenance or long-term monitoring activities;

(4) A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a site.

b) EPA strongly encourages CARs to report specific performance measures related to the four elements in progress reports. These data may be aggregated for national reporting to Congress, and include:

(1) Timely Survey & Inventory - Estimated number of brownfield sites in the state or tribal response program.

(2) Oversight & Enforcement Authorities/Mechanisms - Number of active cleanups and percentage that received oversight; percentage of active cleanups not in compliance with the cleanup work plan and that received communications from the CAR regarding non-compliance.

(3) Public Participation - Percentage of sites in the state or tribal response program where public meetings/notices were conducted regarding the cleanup plan and/or other site activities; number of requests and responses to site assessment requests.

(4) Cleanup Approval/Certification Mechanisms - Total number of "no further action" letters or total number of certificate of completions.

[NOTE: This reporting requirement includes activities not funded with CERCLA Section 128(a) funding, because this information may be used by EPA to evaluate whether CARs have met or are taking reasonable

steps to meet the four elements of a response program pursuant to CERCLA Section 128(a)(2).]

C. Significant Developments: As required by 2 CFR 200.329(e), the CAR must inform EPA and report on significant impacts to grant-supported activities when they occur between the scheduled reporting dates. Significant developments to report may include problems or delays (such as staff vacancies or travel restrictions) as well as favorable developments or successes associated with milestones and activities as listed under section VII.B above.

D. Reporting Requirements Related to Site Assessment and Cleanup Work: The CARs must report on interim progress (e.g., assessment started) and any final accomplishments (e.g., assessment completed, cleanup required, contaminants, Institutional Controls, Engineering Controls) by submitting information into the Brownfields online reporting system, known as the Assessment, Cleanup and Redevelopment Exchange System ("ACRES"). The CAR must enter this data into ACRES within 30 days of the end of the next reporting period or sooner at EPA's request. EPA will provide the CARs with training, which is required to obtain access to ACRES.

E. Final Report: The CAR must submit a final performance report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the work that was performed during the period of performance, explain how the funding was utilized, and may include a summary of activities as is listed under VI.B. above. The final report is due within 120 days of the end of the period of performance and, with approval from the EPA Project Officer, may be submitted in lieu of a final quarterly or semi-annual report.

F. Updating the State Brownfields and Voluntary Response Programs Report in ACRES

State CARs must update their state response program information in ACRES at least once a year (and may update more frequently if changes in their response program warrant an additional update), so that EPA has accurate, up-to-date information to share with the public in the form of a State Brownfields and Voluntary Response Program Report. EPA expects that this annual update will occur when states are already in the ACRES database performing other required ACRES reporting, thereby reducing the administrative burden.

For detailed instructions on how to update your state brownfields information in ACRES, please see the quick reference guide at <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange>.

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

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

VIII. General Federal Requirements: The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, minority business enterprise (MBE)/women's business enterprise (WBE) requirements found at 40 CFR Part 33; nondiscrimination statutes, including Title VI of the Civil Rights Act of 1964, and EPA's implementing regulations found at 40 C.F.R. Parts 5 and 7; OSHA Worker Health & Safety Standards in 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; 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. EPA provides additional information on cross-cutting requirements in [EPA Subaward Cross Cutter Requirements](#).

IX. Program Income: In accordance with 2 CFR 1500.8, the CAR is authorized to add program income generated under this agreement to the funds committed by EPA. The CAR can use this program income to carry out activities described in the scope of work for this agreement and under the same terms and conditions of the agreement. *Program income* is defined generally at 2 CFR 200.1. For the purposes of this agreement, program income includes fees charged participants in the CAR's voluntary cleanup program or other fees for services (only to the extent that these fees recover costs charged to this agreement). Costs the CAR recovers for cleanups and site assessments are program income to the same extent that the recovered costs represent costs charged to this agreement. The CAR must provide as part of its semi-annual performance report, a description of how program income

is being used. In addition, a report on the amount of program income earned during the award period must be submitted with the semi-annual Financial Report, Standard Form 425.

The CAR will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income. As required by 2 CFR 200.305(b)(5), tribal CARs will disburse program income before requesting additional payments under this agreement. State CARs are subject to 2 CFR 200.305(a).

X. Quality Assurance

Authority: Quality Assurance applies to all assistance agreements involving environmental information (including environmental data collection, production, or use) as defined in [2 C.F.R. § 1500.12](#) Quality Assurance.

The CAR shall ensure that subawards involving environmental information issued under this agreement include appropriate quality requirements for the work. The CAR shall ensure sub-award recipients develop and implement the Quality Assurance ("QA") planning document[s] in accordance with this term and condition; and/or ensure sub-award recipients implement all applicable approved QA planning documents.

A. QUALITY MANAGEMENT PLAN ("QMP")

1. Prior to beginning environmental information operations, the CAR must:
 - a. Submit a previously EPA-approved and current QMP,
 - b. The EPA Quality Assurance Manager or designee (hereafter referred to as "QAM") will notify the CAR and EPA Project Officer ("PO") in writing if the QMP is acceptable for this agreement.
2. The QMP must be submitted to the EPA Project Officer within 30 days after grant award, and/or no more than 30 days after grant award.
3. The CAR must review their approved QMP at least annually. The results of the QMP review and any revisions must be submitted to the PO and the QAM at least annually and may also be submitted when changes occur

B. QUALITY ASSURANCE PROJECT PLAN (“QAPP”)

1. Prior to beginning environmental information operations, the CAR must
 - a. Develop SSQAPP.
 - b. Brownfields SSQAPs generated for 128(a) Brownfield projects for which Maine DEP is the grantee will be delegated for sole Maine DEP review and approval. EPA R1 will still approve site work, but not individual SSQAPPs. Likewise, QAPPs that outside entities generate for non-EPA funded projects and submit to the Maine DEP BWQ DEA for review and approval are processed solely by Maine DEP.
 - c. Provide EPA PO (see page 1 of the assistance agreement) a copy of the CAR-approved SSQAPP.
 - d. The CAR must submit the SSQAPP 30 days after the CAR approves the SSQAPP.

For Reference:

- [EPA QA/R-2: EPA Requirements for Quality Management Plans](#) and [EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans](#); contain quality specifications for EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [EPA QA/G-5: Guidance for Quality Assurance Project Plans](#), Appendix C provides a QAPP Checklist.
- (QAM and/or PO may insert QA references that inform or assist the recipient here).
- [EPA’s Quality Program website has a list of QA managers, and Quality Specifications for non-EPA Organizations to do business with EPA.](#)
- [The Office of Grants and Debarment Quality Assurance Requirements.](#)

XI. Competency of Organizations Generating Environmental Measurement Data: In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the agreement’s period of

performance, and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm, or a copy may also be requested by contacting the EPA project officer for this award.

XII. Geospatial Data Standards: All geospatial data created must be consistent with Federal Geographic Data Committee ("FGDC") endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>.

XIII. Cybersecurity Grant Condition

A. The CAR agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

B. (1) EPA must ensure that any connections between the CAR's network or information system and EPA networks used by the CAR to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the CAR's connections, as defined above, do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the CAR agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the CAR into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The CAR agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The CAR will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the CAR

under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the CAR to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

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

DAVIS-BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis-Bacon Prevailing Wage Requirements

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

Hazardous substances contamination:

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

Petroleum contamination:

- (a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,
- (b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
- (c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

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

If the CAR encounters a unique situation at a site (e.g., unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB

applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

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

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

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

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

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

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

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

(iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the "Heavy Construction" classification. (Only applies to petroleum contamination.)

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

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

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

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

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

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

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

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

3. Contract and Subcontract Provisions

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

(1) Minimum wages.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

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

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

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

award official within the 30-day period that additional time is necessary.

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

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

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

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

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

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked,

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

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

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance"

required by paragraph (a)(3)(ii)(B) of this section.

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

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

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

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

employees or their representatives.

(9) Certification of eligibility.

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

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

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

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

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

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

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

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S

Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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