



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 2/26/2013

Report Type: Consent

Title: Brownfields Revolving Loan Fund Grant Acceptance

Report ID: 2013-00189

Location: Citywide

Recommendation: Pass a Resolution: (1) authorizing the City Manager or his designee to execute the second amendment to the Brownfields Revolving Loan Fund (RLF) grant from the U.S. Environmental Protection Agency to increase the grant amount by \$400,000, and (2) approving an increase in the amount of \$400,000 to the revenue and expenditure budgets for G18334500 (Fund 2702).

Contact: Denise Malvetti, Senior Project Manager, (916) 808-7064, Economic Development Department

Presenter: N/A

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

- 1-Description/Analysis
- 2-Background Supp 2013
- 3-Notice of Award 2013 Supp
- 4-Resolution Supp Funds 2013

City Attorney Review

Approved as to Form
Sheryl Patterson
2/19/2013 9:50:47 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
2/11/2013 12:11:28 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 2/14/2013 2:31:35 PM

Description/Analysis

Issue: In 1997, the City of Sacramento established a Brownfields Revolving Loan Fund (RLF) Program funded by the United States Environmental Protection Agency (EPA). The purpose of the RLF program is for the City to provide loans and subgrants to qualified projects to assist with the investigation and cleanup of contaminated sites within the City. Since the inception of the City's program, the EPA has awarded the City of Sacramento (City) approximately \$1.8 million. Through a competitive process last year, the City applied for supplemental funds and on January 24, 2013 the EPA approved the award of \$400,000 in additional funding (Attachment 2). This Council action will approve the second amendment to the RFL grant agreement and authorize the City Manager to accept the funds to supplement the City's existing RLF program that provides loans and subgrants to remediate brownfields sites in the City. The supplemental agreement extends the RLF Program by one year until October 31, 2014.

Policy Considerations: This action supports the City's goal of expanding economic development throughout the city by offering a tool to assist with the cleanup and reuse of vacant and underutilized properties.

Economic Impacts: None at this time.

Environmental Considerations: The proposed action does not constitute a project as defined by the California Environmental Quality Act (CEQA) [Guidelines Section 15378 (b)(4)] and is exempt from NEPA per 24CGR Part 58.34 (a)(4). Projects which receive RLF loans will be subject to environmental review.

Sustainability: The RLF Program promotes sustainability by eliminating property contamination and supporting infill development.

Commission/Committee Action: None.

Rationale for Recommendation: The proposed action enables the City to continue to fund its RLF program. The RLF program is a critical tool to assist with the reuse of vacant and underutilized brownfields sites. The redevelopment of brownfields sites can be extremely expensive and the RLF program offers a tool for property owners to finance the cleanup overtime thereby incentivizing development. With the elimination of Redevelopment in the State of California, it is critical to offer other financing tools to assist challenging projects.

Financial Considerations: The EPA has awarded the City \$400,000 for the RLF Program. The recommended action will increase the revenue and expense budget for the existing budget, G18334500 (Fund 2702) by \$400,000. The grant requires a 20% match that will be funded by loan and subgrant recipients pursuant to the adopted City of Sacramento RLF Loan Policies and Procedures Manual.

Emerging Small Business Development (ESBD): Not Applicable.

Background

A “brownfield” is generally defined as a site which is unused or underutilized due to the actual or perceived presence of hazardous substances. These conditions occur in both commercial and residential settings. As new development and investments bypass the suspect site it becomes a blight to the community and in worst-case scenarios it may also present health hazards.

In 1997, the City of Sacramento was awarded an Environmental Protection Agency (“EPA”) Brownfields Cleanup Revolving Loan Fund Program (“RLF”) grant of \$350,000 to establish and RLF Program. That grant was augmented in 1999 by \$150,000, in 2004 by \$500,000, in 2005 by \$422,418 and a final supplemental award in 2011 for \$400,000. In total, the EPA has granted the City over \$1.8M for the RLF Program.

In 2009, the City Council adopted a RLF Implementation Plan Loan Policies and Procedures Manual outlining the loan application process, underwriting criteria, loan structure and terms, and loan administration policies.

To date, the City has made the following RLF loans:

Loan I: CADA Warehouse located at 12th and R Streets

Loan amount: \$250,000 approved in 2002

Purpose: Excavation of site performed by Delta Oil under DTSC oversight.

Loan II: CADA Warehouse located at 12th and R Streets

Loan Amount: \$200,000 approved in 2004

Purpose: Soil Remediation

Loan III: Curtis Park Village

Loan Amount: \$900,000 approved in 2009

Purpose: Soil Remediation

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 00955601 MODIFICATION NUMBER: 2 PROGRAM CODE: BF	DATE OF AWARD 01/17/2013
		TYPE OF ACTION Augmentation: Increase	MAILING DATE 01/24/2013
		PAYMENT METHOD: ASAP	ACH#
RECIPIENT TYPE: Municipal		Send Payment Request to: Las Vegas Finance Center, Fax (702) 798-2423	
RECIPIENT: City of Sacramento 915 I Street, 3rd Floor Sacramento, CA 95814 EIN: 94-6000410		PAYEE: City of Sacramento 915 I Street, 3rd Floor Sacramento, CA 95814	
PROJECT MANAGER Diana Sasser 915 I Street, 3rd Floor Sacramento, CA 95814 E-Mail: dsasser@cityofsacramento.org Phone: 916-808-5519		EPA PROJECT OFFICER Noemi Emeric-Ford 75 Hawthorne Street, SFD-6 San Francisco, CA 94105 E-Mail: emeric-ford.noemi@epa.gov Phone: 213-244-1821	EPA GRANT SPECIALIST Elizabeth Armour Grants Management Office, MTS-7 E-Mail: Armour.Elizabeth@epa.gov Phone: 415-947-4264
PROJECT TITLE AND EXPLANATION OF CHANGES BROWNFIELDS REVOLVING LOAN FUND (RLF) COOPERATIVE AGREEMENT This cooperative agreement will capitalize a Brownfields Revolving Loan Fund program that will enable landowners and developers to borrow funds to cleanup properties contaminated with petroleum and hazardous substances in the City of Sacramento. This assistance agreement provides additional federal funding in the amount of \$400,000 and extends the Project and Budget end dates from 10/31/2013 to 12/31/14. See Terms and Conditions.			
BUDGET PERIOD 10/01/2007 - 12/31/2014	PROJECT PERIOD 10/01/2007 - 12/31/2014	TOTAL BUDGET PERIOD COST \$2,111,752.00	TOTAL PROJECT PERIOD COST \$2,111,752.00
NOTICE OF AWARD			
Based on your Application dated 08/27/2010 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$400,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,759,793. 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 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 U.S. EPA, Region 9 Grants Management Office, MTS-7 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9 Superfund Division, SFD-1 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Denise Zvanovec - Grants Management Officer			DATE 01/17/2013

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 1,359,793	\$ 400,000	\$ 1,759,793
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 271,959	\$ 80,000	\$ 351,959
State Contribution	\$ 0	\$	\$ 0
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 1,631,752	\$ 480,000	\$ 2,111,752

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	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
-	1309K0B002	12	E4	09K2AG7	301D79	4114	G900OL00		400,000
									400,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$17,000
2. Fringe Benefits	\$0
3. Travel	\$10,000
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$574,171
7. Construction	\$0
8. Other	\$1,510,581
9. Total Direct Charges	\$2,111,752
10. Indirect Costs: % Base <u>See Term and Condition</u>	\$0
11. Total (Share: Recipient <u>16.67%</u> Federal <u>83.33%</u> .)	\$2,111,752
12. Total Approved Assistance Amount	\$1,759,793
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$400,000
15. Total EPA Amount Awarded To Date	\$1,759,793

Administrative Conditions

All Administrative Terms and Conditions Remain in Full Force and Effect.

Programmatic Conditions

All Programmatic Terms and Conditions have been revised. Please refer to the Revised Attachment A for applicable programmatic conditions.

END OF DOCUMENT

City of Sacramento
Revolving Loan Fund (RLF)
Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 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.
2. In implementing this agreement, the cooperative agreement recipient 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.
3. 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.
4. Information submitted to EPA under this cooperative agreement may be subject to the Freedom of Information Act (FOIA). EPA recommends that recipients do not provide confidential business information ("CBI") to the Agency. However, if confidential business information is included, it will be treated in accordance with 40 CFR 2.203. Recipients must clearly indicate which portion(s) of the information submitted to EPA the recipient claims as CBI. EPA will evaluate such claims in accordance with 40 CFR Part 2. If no claim of confidentiality is made, EPA is not required to make the inquiry to the recipient otherwise required by 40 CFR 2.204(c)(2) prior to disclosure. Unless otherwise required by Federal, State, or local law, the CAR and its borrowers and subgrantees are not required to permit public access to their own records. 40 C.F.R. 30.53; 40 C.F.R. 31.42. See 40 C.F.R. part 2 for EPA's general information-disclosure procedures.

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY

A. Brownfields Site Eligibility

FY12 RLF Terms & Conditions

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. 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, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines for Brownfields Revolving Loan Fund Grants* dated September 2011 for discussion of this element) documenting that:
 - a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
 - b. the State determines there is "no viable responsible party" for the site;
 - c. 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. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

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

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) 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 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 will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in “3” above.

B. Borrower and Subgrant Recipient 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 nonprofit organizations as defined in 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.
2. 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.**
3. 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. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**
4. 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.
5. 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 or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
6. The CAR shall maintain sufficient documentation supporting and demonstrating the

eligibility of the sites, borrowers, and subgrant recipients.

7. 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.
8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

C. 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 potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through;
 - (a) any direct or indirect familial relationship; or
 - (b) any contractual, corporate, or financial relationships; or
 - (c) a reorganized business entity that was potentially liable or 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 to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit

human, environmental, or natural resource exposure to any previously released hazardous substance;

- 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).

III. 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 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. 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; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving 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 to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up 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. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.
- c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

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

3. 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.
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subgrant agreements prior to execution.
5. 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. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. Quarterly progress report must include:
 - a. Summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
 - b. An update on project schedules and milestones.
 - c. A list of the loans and/or sub-grants awarded during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; and total remaining funds.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred,

or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. See Section VII for more details on final report and closeout.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. 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 brownfields sites.
 - b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to \$200,000 per site). (Note: when implemented as a policy change, the CAR may request a waiver to the 50% cap on subgrant funds. Please consult with your Regional Project Officer.)
 - c. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):

- 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. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;
 - d. 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;
 - e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;
 - f. Establishing an administrative record for each site;

- g. Developing a Quality Assurance Project Plan (QAPP) as required by Part 31 and Part 30 regulations. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;
- h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;
- i. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;
- 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 C.
- 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.

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. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
 - c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.
 - d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
 - e. To pay for a penalty or fine.

- f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
 - g. 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.
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
 - i. 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:
 - 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.
- e. 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:
- i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.
 - iv. 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.

- v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.
4. 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.
5. 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 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.

D. Use of Program Income

1. 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.
2. 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.
3. The CAR that elects to use program income to cover all or part of an RLF's programmatic

costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with 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.

4. 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.
5. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

E. 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.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
2. 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.
3. Interest earned on program income is considered additional program income.

V. 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 alternatives may – as national or regional policies direct - additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the 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.
2. The CAR should comply with the following QA requirements:
 - a. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.

- b. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption and the recipient contacts the Quality Assurance Manager to obtain approval prior to beginning the sampling work. Contact the QA Office at 415-972-3411. In the event an unforeseen site condition arises during the cleanup work, changes or deviations to the type of contaminant sampled, methodology, or sample spacing, the recipient must contact the Quality Assurance Manager to determine if the Sampling and Analysis Plan must be amended before new work is initiated. If the change is such that a site hazard is created by a delay in the work, the recipient shall contact the Quality Assurance Manager to obtain approval prior to formally revising the document. Minor field deviations (i.e: slight location changes) should be noted in the final cleanup report, but do not require EPA approval.
- c. Under the Assessment, Cleanup, and Revolving Loan Fund programs, a one-site project may use the one-site Region 9 Sampling and Analysis Plan which incorporates the QAPP.
- d. If the review and approval of the QAPP was completed five years ago, it must be resubmitted to EPA for review and approval to ensure it remains a useful and valid document for the site.
- e. In general, a QAPP or Sampling and Analysis Plan will require approximately two to four weeks for the EPA Quality Assurance Manager to review and return comments. Documents generally require one revision and re-submittal. The re-submittal review time is typically two weeks.

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, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; 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 an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet 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. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant workplan has been submitted to and approved by U.S. EPA. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any 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.
- i. 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 that are recipients of subgrants.
- j. 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, please see the Davis-Bacon Addendum to these terms and conditions. (*EPA Project Officer to attach*

appropriate Davis-Bacon term and condition to this particular grant.)

- k. Federal cross-cutting requirements include, but are 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.

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.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: “payment” is the U.S. EPA’s transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into a loan agreement with the borrower or subgrant recipient; “disbursement” is the transfer of funds from the CAR to the borrower or subgrant recipient. “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. A waiver from this requirement may be granted by EPA after a written request is submitted that adequately justifies drawing down cooperative agreement funds prior to accrued program income.

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 or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant/loan recipient’s payment of costs incurred in carrying out the subgrant/loan. In unusual circumstances, disbursement may occur upon execution of the loan or

subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

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

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 an 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 § 107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

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 may be amended to reflect the reduced amount of the cooperative agreement.

E. Final Requirements

1. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

- a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
P.O. Box 98515
Las Vegas, NV 89193-8515
Fax: (702) 798-2423
<http://www.epa.gov/ocfo/finservices/payinfo.html>

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

- b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. 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.

RESOLUTION NO. 2013-

ADOPTED BY THE SACRAMENTO CITY COUNCIL

APPROVING THE SECOND AMENDMENT TO THE BROWNFIELDS REVOLVING LOAN FUND GRANT FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND CORRESPONDING BUDGET AMENDMENT

BACKGROUND

- A. A “brownfield” is generally defined as a site which is vacant or under-utilized due to the actual or perceived presence of hazardous substances. Brownfields redevelopment is a fiscally-sound way to bring investment back to Sacramento’s business corridors; cleanup the environment; reuse infrastructure; and eliminate blight.
- B. The City Council has previously accepted grant funding from the U.S. Environmental Protection Agency (EPA) to fund the establishment of the City of Sacramento’s (City) Brownfields Revolving Loan Fund (RLF) Program. The Brownfields RLF Program helps fund the costs for cleanup of contaminated sites within the City to prepare them for development.
- C. In April 2012, the City submitted an application to the EPA for additional supplemental funds for the Brownfields Revolving Loan Fund to help fund the costs for additional sites.
- D. On January 24, 2013, EPA approved an award of an additional \$400,000 in grant funds to supplement the existing Brownfields Revolving Loan Fund Program.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Second Amendment to the Brownfields Revolving Loan Fund Grant in the amount of \$400,000 from the U.S. Environmental Protection Agency is hereby approved. The City Manager or his designee is authorized to execute the amendment and accept the additional grant funds to supplement the City’s Brownfields Revolving Loan Fund Program (Fund 2702).
- Section 2. The City Manager is hereby authorized to increase the Brownfields Revolving Loan Fund revenue and expense budget (G18334500) by \$400,000 for funding the cleanup of contaminated sites within the City in

accordance with the RLF Implementation Plan Loan Policies and Procedures Manual.