160731

CONTRACT NO. _____

THE KANSAS CITY BROWNFIELD REVOLVING LOAN FUND (RLF)

SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT ("Agreement" or "Subgrant") is made by and between the **CITY OF KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation of the State of Missouri, through its **DEPARTMENT OF CITY PLANNING AND DEVELOPMENT**, hereinafter referred to as ("City") and the **NEGRO LEAGUES BASEBALL MUSEUM, INC.**, a Missouri nonprofit corporation, (referred to herein as "NLBM" or the "Subgrantee").

RECITALS

WHEREAS, the City, through the United States Environmental Protection Agency (EPA), has been awarded grant funds through Cooperative Agreement, No. BF-97700901 (the "EPA Cooperative Agreement") to establish a Brownfields Revolving Loan Fund (RLF), and is authorized to make certain loans and subgrants from these RLF funds; and

WHEREAS, NLBM is the owner in fee of certain real property shown on **Exhibit A** commonly known as the Former Paseo YMCA, located at 1824 The Paseo Boulevard, Kansas City, Missouri, in which there exists certain environmental impairments to as depicted on **Exhibit B** attached hereto (the "Property"); and

WHEREAS, prior to NLBM's ownership, the Property became contaminated with hazardous substances, including asbestos-containing building materials (ACBM) and lead-based paint (LBP); and

WHEREAS, in 2005 NLBM was the recipient of a Brownfields Cleanup Grant in the amount of $165,047.00 awarded by the U.S. Environmental Protection Agency (EPA) in 2005 for the cleanup of asbestos containing materials (ACM), aviary waste and household hazardous wastes (HHW) from the facility; and

WHEREAS, between September 29 and October 21, 2005 abatement work was performed to remove aviary waste, HHW and most of the ACM in accordance with a Remedial Action Plan approved by the Missouri Brownfields Voluntary Cleanup Program (BVCP);

WHEREAS, after 2005 no further cleanup activity occurred due to a lack of funds and in July 2008, MDNR terminated the site from the BVCP for inactivity;

WHEREAS, a Lead-Based Paint Inspection report prepared by Titan Environmental Services, Inc. dated April 10, 2014 confirmed the presence of unstable lead-based paint (LBP) surfaces within the YMCA building at the Site; and,

WHEREAS, a partial cleanup of LBP was performed in May 2014 in portions of the basement and first floor, according to the Lead-Based Paint Stabilization Close-Out Report prepared by Titan Environmental Services, Inc. dated May 15, 2014; and

WHEREAS, there remain untreated LBP surfaces in the second, third or fourth floors, and building areas and additional ACM materials in friable condition and applicable environmental laws and regulations require these issues be addressed prior to renovation; and

WHEREAS, the abatement of additional quantities of ACM, and the cleanup and stabilization of LBP and removal of LBP building components is estimated to cost approximately $115,200 (the "Project"); and

WHEREAS, on April 18, 2016, the Commission adopted Resolution 001-2016 recommending to the City Council an RLF subgrant to NLBM for the cleanup of the Paseo YMCA Building, be granted, subject to certain preconditions; and

WHEREAS, the first precondition, that the USEPA confirms that NLBM and the Site meet the eligibility criteria of the Federal Cooperative Agreement has been met by the receipt of a confirmation of eligibility from USEPA by e-mail communication to that effect; and

WHEREAS, the second precondition, that the Missouri Department of Natural Resources (MDNR) accept re-enrollment of the Paseo YMCA Site into the Brownfields Voluntary Cleanup Program (BVCP) has been met by the receipt of a letter from MDNR confirming that the Site has been accepted into the BVCP; and

WHEREAS, the third precondition, that a non-federal source of funds be identified as the $19,200.00 required local match to replace the waiver of the local match requirement for NLBM has been met by identifying funds from the proceeds of bonds authorized by Ord. No. 160431; and

WHEREAS, on _____, 2016, the City Council passed Ordinance No. _____, which approves Subgrantee's request and authorizes the Director of City Planning and Development to enter into this Agreement; and

WHEREAS, Subgrantee owns the entire Property in fee simple and has full access to the Property; and

WHEREAS, Subgrantee is not a "generator" or "transporter" of the contamination on the Property, within the meaning of those terms under CERCLA; and

WHEREAS, Subgrantee acquired the Property after the time of disposal or placement of hazardous substances and has not caused, contributed to, permitted or exacerbated the release of hazardous substances on, or emanating from the Property; and

WHEREAS, the Subgrantee is the current owner of the Property, but is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607, and the Subgrantee meets the conditions for a CERCLA liability exemption as either a "Bona Fide Prospective Purchaser," "Innocent Purchaser" or a "Contiguous Property Owner" in accordance with the meaning of those terms under Section 101(40) of CERCLA, 42 U.S.C. 9601(40); and

WHEREAS, an analysis of Analysis of Brownfield Cleanup Alternatives was prepared for public review and comment for 30 days, and a public meeting was held to discuss the ABCA on _____, 2016 pursuant to an appropriate Community Relations Plan; and

WHEREAS, City and Subgrantee intend to enter into this Agreement designed to disburse certain monies to Subgrantee pursuant to the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained within this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in any document, plan or record collateral to this Agreement related to the Project. Unless otherwise defined in the recitals, the following definitions shall apply for the purposes of this Agreement:

1.1 "Approved Response Plan" means a Risk Management Plan or other plan approved by the Missouri Department of Natural Resources through the Brownfields Voluntary Cleanup Program (BVCP), and approved by the City and QEP, and amended as necessary, that is designed to respond to environmental conditions on the Property and ensure the protection of human health and the environment in accordance with all applicable state and federal laws and regulations, including, without limitation, Missouri Risk-Based Corrective Action (MRBCA) Departmental Rule, Chapter 10, Missouri Code of State Regulations, Section 25-18.010, and related guidance.

1.2 "ABCA" or "Analysis of Brownfield Cleanup Alternatives" means the document that identifies and compares a range of response alternatives. In the case of this Agreement, it is the document prepared by the Subgrantee, dated _____, 2016 (the "ABCA" or the "Analysis of Brownfield Cleanup Alternatives"), pursuant to the Community Relations Plan.

1.3 "RLF Grant" or "EPA Cooperative Agreement" is the federal cooperative agreement No. BF-97700901, entitled "Kansas City Brownfields Revolving Loan Fund," by and between the City, as the Cooperative Agreement Recipient, and the U.S. Environmental Protection Agency (EPA), as the granting agency, as amended.

1.4 "Local Cost Share Funds" are additional funds, apart from RLF Grant funds, that are provided for eligible and allowable costs of the Approved Response Plan to meet the RLF Grant requirement that the Cooperative Agreement Recipient pay a local cost share of at least twenty percent (20%) of the total federal funds awarded under the Agreement.

1.5 "Cooperative Agreement Recipient" or "CAR" is the party, in this case the City, that enters into the EPA Cooperative Agreement. The City, as CAR, has sole authority to draw down RLF funds from EPA and is obligated by the EPA Cooperative Agreement to ensure compliance with all of its terms and conditions, including the obligation to require that the Subgrantee and its contractors also comply with all applicable terms and conditions of the EPA Cooperative Agreement. The Subgrantee acknowledges and understands that the City, as CAR, is ultimately responsible to EPA for any misuse of RLF funds, or other failure to comply with this Agreement or the applicable terms and conditions of the EPA Cooperative Agreement, by the Subgrantee or its contractors, agents or assignees.

1.6 "Cooperative Agreement Work Plan" is the approved Work Plan for the EPA Cooperative Agreement. It sets forth in detail the objectives, budget, schedule, tasks, outputs and outcomes for the City's "Brownfields Revolving Loan Fund" Program. It provides the City's criteria and process for selection of RLF sites and projects, borrowers, and subgrant recipients, and measures to ensure compliance with the EPA Cooperative Agreement.

1.7 "Fund Manager" is the party designated by the City as the Fund Manager for this Subgrant. For this Subgrant, the Fund Manager shall be the Brownfields Coordinator within the City's Department of City Planning and Development. The Fund Manager works on behalf of the City and is responsible for the financial management of the Grants. The Fund Manager assists the City in meeting its financial responsibilities with respect to this Subgrant. In particular, the Fund Manager is responsible for assisting City in the disbursement of funds to Subgrantee and ensuring compliance with the disbursement process as provided by Section ___, and the conditions of disbursement set forth in Section ____ of this Agreement; monitoring Subgrantee's adherence to eligible cost requirements; monitoring local cost share participation; and performing all activities necessary for disbursing, tracking and reporting RLF funds for this Subgrant. The Fund Manager is designated by the City and is subject to removal or replacement at any time, without notice.

1.8 "Qualified Environmental Professional" or "QEP" is the party designated by the City on its behalf as the party responsible for oversight and management of the cleanup. The QEP for this Agreement shall be Family Environmental Services, Inc. The QEP assists the City in meeting its environmental compliance responsibilities with respect to this Subgrant. In particular, the QEP is responsible for reviewing and approving the ABCA and responding to public comments; documenting the selection of the cleanup plan; coordinating with the Subgrantee

and its contractors and subcontractors to monitor cleanup activities; ensure compliance with the Approved Response Plan and applicable laws and regulations; and prepare or review a final report documenting the cleanup actions. The QEP is designated by the City and is subject to removal or replacement at any time, without notice.

2. The Agreement.

2.1 The City agrees to provide Subgrantee a total amount not to exceed ONE HUNDRED FIFTEEN THOUSAND TWO HUNDRED DOLLARS ($115,200.00) (the "Agreement Funds") to pay eligible costs, to the extent allowable under applicable laws and regulations, incurred by Subgrantee in performance of the Approved Response Plan and other activities as authorized by the Approved Subgrant Activities **(Exhibit G),** and in accordance with the Approved Subgrant Budget **(Exhibit F)**, and subject to all terms and conditions of this Agreement. Of the total Agreement Funds disbursed pursuant to this Agreement, 80% shall be RLF Grant funds awarded to the City under the EPA Cooperative Agreement and 20% shall be the proceeds of bond funds authorized by Ordinance No. _____ as the Local Cost Share. City is under no duty to make available any additional monies regardless of source.

2.1.1 The final total of disbursed Agreement Funds and Local Cost Share Funds shall equal a ratio of 80% Subgrant Funds and 20% Local Cost Share Funds;

2.1.2 No Agreement Funds may be disbursed to Subgrantee except in compliance with the conditions and procedures set forth in Sections 3.23 (Conditions Precedent to Subgrant Disbursement) and 7.2 (Disbursement Procedures**)** of this Agreement.

2.1.3 Subgrantee has no rights, interests, claims, or privileges with respect to Agreement Funds not disbursed to Subgrantee other than those expressly provided by this Agreement.

2.1.4 Upon termination of the Subgrant period or the expiration of this Agreement, Subgrantee may no longer request disbursement of funds and any Agreement Funds not disbursed to Subgrantee in accordance with this Agreement shall remain with the City.

2.2 **Purpose of the Agreement**. Agreement Funds are to be used by the Subgrantee to implement the Approved Response Plan to remediate hazardous waste, hazardous substances and other contamination on the Property in order to protect human health and the environment and facilitate a proposed redevelopment or reuse of the property to the benefit of the community.

2.3 **Changes to Approved Response Plan.** Subgrantee, with MDNR, City and QEP approval, may change or modify environmental cleanup activities as necessary to address situations in which the planned environmental cleanup may

fail to fully address the Property conditions. If the selected cleanup will not fully address Property conditions, or Subgrantee is unable or unwilling to complete the cleanup, the City and its agents and assignees may take reasonable measures to ensure that the Property is secure and poses no immediate threat to human health or the environment, including, but not limited to, entering and remaining on the Property in order to secure the Property or address the immediate threat to human health or the environment; securing the Property and posting signs; and, hiring of contractors and environmental professionals to secure the Property or address the immediate threat to human health or the environment, all at Subgrantee's cost. The City will notify appropriate state agencies and EPA to ensure an orderly transition to other appropriate cleanup activities.

2.4 **Term**. Notwithstanding Section 2.5 below, this Agreement shall commence as of the date the City's authorized representative executes it and shall terminate upon the occurrence of any of the following of the following:

2.4.1 Completion of the Approved Response Plan and fulfillment by the parties of their obligations under this Agreement, including submittal of any final reports or accounting requested by the City.

2.4.2 A written determination is issued by MDNR or the City to the effect that the Property is remediated or abated in accordance with the Approved Response Plan and all applicable federal and state requirements and the terms and conditions of the Cooperative Agreements;

2.4.3 Notwithstanding the immediately preceding termination events, the City may terminate this Agreement by giving ten (10) days written notice, if the Subgrantee substantially fails to fulfill its obligations under this Agreement. In the event of termination, the Subgrantee shall return to the City any and all Agreement Funds it received in excess of the total eligible services and expenses incurred and associated with the Project up to the time of termination. The City shall notify EPA within thirty (30) days in the event this Agreement is terminated.

2.5 **Subgrant Period.** Notwithstanding section 2.4 above, in no event shall Agreement Funds be available for work undertaken, or eligible costs incurred, after September 30, 2018, the effective period of the RLF Grant, unless such period is extended by amendment.

2.6 **Site Control**. In addition to any other representations made, Subgrantee has represented to City, and in making the Agreement, City has relied upon, the representation by Subgrantee that it holds fee title to the entire Property, has the ability to undertake the obligations required of it hereunder, and guarantees access to the Property for Subgrantee's agents and contractors, the agents, officers, contractors and subcontractors of the City, the EPA, and the Missouri Department of Natural Resources (MDNR), for the duration of this Agreement.

3. Subgrantee Obligations

3.1 **Acceptance.** Subgrantee shall notify the City, in writing, of acceptance of this offer by delivering to the City six (6) originals of this Agreement executed by the Subgrantee's duly authorized representative. Once signed by all parties, this Agreement is binding.

3.2 **Local Cost Share Funds.** Subgrantee understands that the RLF Grant is subject to a local cost-share requirement of 20% and agrees to expend Agreement Funds representing Local Cost Share on eligible Project expenses in an amount equal to 20% of the entire amount of Agreement funds disbursed by this Agreement, in accordance with the Approved Subgrant Budget. Subgrantee agrees not to use any RLF Grant funds for its local cost share of the Project, unless the use of such federal funds for local cost share or matching costs is expressly allowed by the terms of the relevant federal funds agreement. Expenditures on any costs that are ineligible or prohibited by this Agreement shall not be counted towards Subgrantee's local cost share.

3.3 **Use of Funds**.

3.3.1 **Project Costs.** Subgrantee agrees and understands that all Agreement Funds provided by City shall be used solely for the Project in accordance with the Approved Response Plan, the Approved Subgrant Activities and the Approved Subgrant Budget. Subgrantee shall pay all costs relating to the Project, including, but not limited to, all plans and permits for the Project. All Project costs shall be in compliance with the Approved Subgrant Budget, the Approved Subgrant Activities, the terms and conditions of the EPA Cooperative Agreements, and all other applicable federal, state and local laws.

3.3.2 **Administrative Costs.** Subgrantee shall not use Agreement Funds for any administrative costs, including costs of required tasks such as record retention, maintaining and operating financial management systems, accounting tasks, all indirect costs under OMB Circulars A-21 (2 CFR Part 220) and A-87 (2 CFR Part 225, and Subpart 31.2 of the Federal Acquisition Regulations). There are limited exceptions to the administrative cost prohibition if such costs are eligible "programmatic" costs (i.e., costs that are integral to achieving the purpose of the grant). Subgrantee must obtain the specific written consent of the City before incurring any programmatic costs not specifically authorized by this Agreement.

3.3.3 **Prohibited Uses of Funds.** Subgrantee shall not use any Agreement Funds for any costs or activities prohibited by the EPA Cooperative Agreements or applicable laws and regulations governing such funds. Guidance on eligible and allowable expenses for RLF Subgrants is provided by the EPA and the Revolving Loan Fund Grant

Program Administrative Manual (2008), a copy of which will be provided by the City to the Subgrantee, upon request. Examples of prohibited costs include, but are not limited to, the following:

- Pre-cleanup environmental activities (e.g., site assessment);
- Identification and characterization (with the exception of site monitoring activities);
- All indirect costs (except reimbursement of contractor's established indirect cost rates if contract is for an eligible activity);
- Sampling activities (except confirmatory sampling);
- Addressing public or private drinking water supplies that have deteriorated through ordinary use;
- A cleanup or other response cost at a brownfields site for which the Subgrantee is potentially liable as a PRP under CERCLA § 107;
- 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 or remediation activities;
- Construction, demolition, and development activities that are not cleanup or remediation activities (e.g., marketing of property or construction of a new facility);
- Cost sharing or matching requirement for another federal grant(absent statutory authorization);
- Support of job training covered by EPA's CERCLA § 104(k)(6)grant program;
- Support of lobbying efforts, in accordance with applicable OMB cost principles;
- Penalties or fines;
- A federal cost-share requirement (absent statutory authorization);
- A cost related to complying with federal laws other than those applicable to the cleanup or remediation activities; or
- Purchasing insurance intended to provide coverage for any of these ineligible activities.

3.3.4 **Improper Use of Funds.** Subgrantee agrees and understands that in addition to any remedies otherwise available to the City under this Agreement, under law or in equity, the City may require Subgrantee to return or repay any Agreement Funds received that were used for illegal or ineligible purposes; provided the City, in no way, participated in the expenditure of such funds for illegal or ineligible purposes. In addition to any other indemnification provision herein, Subgrantee shall contractually obligate its contractors and subcontractors to agree to indemnify and hold harmless the City for any fees, penalties, claims, judgments or other costs and damages, including any demand for interest payments, as a result of the illegal or ineligible use of Agreement Funds. For purposes of this indemnity, claims against the City shall include administrative

determinations by any government agency that Agreement Funds disbursed under this Agreement were used for illegal or ineligible uses.

3.4 **Compliance.** Subgrantee agrees that the receipt of any Agreement Funds under this Agreement is conditioned upon the Subgrantee's full compliance with this Agreement, all Project documents and attachments, the applicable terms and conditions of the EPA Cooperative Agreement (see Section 4)**,** and the full compliance of Subgrantee's contractors and subcontractors with the applicable terms and conditions of the EPA Cooperative Agreement (see Section 5).

3.5 **Required Plans and Documents.**

3.5.1 Subgrantee shall prepare and implement a Community Relations Plan. The Community Relations Plan is designed to inform affected community stakeholders about the response action and provide reasonable notice, opportunity for involvement, response to comments, and access to available administrative records to the public.

3.5.2 The Subgrantee shall implement the Approved Response Plan, the Approved Subgrant Activities **(Exhibit G)**, and the Approved Subgrant Budget **(Exhibit F)**. The Approved Response Plan includes, without limitation:

3.5.3 The MDNR Generic Quality Assurance Project Plan and Site Specific Addendum, if required (QAPP).

3.5.4 The Health and Safety Plan.

3.5.5 Bid Specifications.

3.5.6 Subgrantee shall create and maintain a public document repository containing the ABCA, the Approved Response Plan and all relevant reports and documents concerning the Property and Project, all in accordance with the Community Relations Plan. The public document repository will be maintained at _____, where it will be available to the public during normal business hours. Upon termination, an exact copy of the complete repository shall be submitted to the City.

3.6 **Cleanup Objective.** Subgrantee shall ensure the environmental cleanup is protective of human health and the environment, as required by applicable law and programmatic requirements of the Brownfields/Voluntary Cleanup Program (BVCP).

3.7 **Implementation of Approved Response Plan.** Subgrantee shall implement and complete the Approved Response Plan, and any amendments thereto, and shall exercise its best efforts to complete any other activities required by the City or the EPA in order to meet cleanup objectives, protect human health

and the environment, and meet the requirements to obtain a "Certificate of Completion" issued by MDNR through the BVCP indicating the proper completion of the Approved Response Plan.

3.8 **Qualified Contractor.** To perform the Approved Response Plan, Subgrantee shall hire competent professional services in compliance with applicable procurement regulations, the applicable terms and conditions of the EPA Cooperative Agreement, and all other requirements of this Agreement. Subgrantee shall ensure that its contractors, subcontractors meet the following conditions and requirements:

3.8.1 Are not debarred from federal contracts and are otherwise qualified to undertake the work.

3.8.2 Possess all required professional certifications and registrations necessary to perform the Approved Response Plan.

3.8.3 Demonstrate to the City's satisfaction adequate expertise, experience, capacity and reliability to perform the Approved Response Plan.

3.8.4 Work shall not begin on the Approved Response Plan until the City approves the Subgrantee's qualified contractors and subcontractors. The City shall not reject Subgrantee's contractor or subcontractor without reasonable cause. Subgrantee shall be allowed a reasonable opportunity to replace a rejected contractor or subcontractor with a qualified professional that meets the above conditions.

3.8.5 Subgrantee may use any qualified contractors and/or subcontractors approved by the City to perform the Approved Response Plan.

3.9 Subgrantee shall comply with all applicable local, state or federal law and regulations in fulfilling the terms of this Agreement.

3.10 Subgrantee shall comply with the procurement requirements of 2 CFR Part 200, in addition to any and all applicable local, state or federal contract and bidding requirements.

3.11 Unless subject to the attorney-client privilege, Subgrantee shall submit to the City final copies of all reports, studies, data, or contracts relating to the Project, in addition to any reports required by the EPA Cooperative Agreement. This provision shall survive termination.

3.12 If any samples will be collected as part of the Approved Response Plan, Subgrantee shall follow the MDNR Generic Quality Assurance Project Plan and shall prepare and submit a site specific addendum, if required (the "QAPP"). No

samples will be gathered and analyzed as part of the Approved Response Plan unless governed by the QAPP.

3.13 Subgrantee shall assist with the completion of EPA Property Profile Forms, if requested by the City.

3.14 Subgrantee shall cooperate fully with any request by City, and any independent auditor on behalf of City, to review this Agreement and associated project activities, as necessary for the City to comply with applicable law, including, but not limited to, any requirement to prepare a federal single audit in accordance with Office of Management and Budget (OMB) Circular A-133.

3.15 Subgrantee shall document all the uses of the Agreement Funds, and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. Subgrantee shall permit any representative of City, at any reasonable time, to inspect, audit and examine such books and inspect the properties of Subgrantee and shall maintain documentation on the use of the grant proceeds for a minimum of three (3) years after the completion of remediation activities supported by the Subgrant, except that records that are subject to audit findings shall be retained ten (10) years after such findings have been resolved, and all such records and supporting documents shall be made available, upon request, for inspection or audit by the City or its representatives.

3.16 Subgrantee shall maintain documentation until the completion of any litigation, claim, negotiation, audit or other action involving those documents or for the record retention period set above, whichever is longer. Subgrantee shall seek the written approval of the City prior to disposing of records.

3.17 Subgrantee shall notify the City when the Project is complete. The notice shall contain certification or documentation that the eligible activities are completed and have been performed in accordance with the terms of this Agreement. This grant closeout documentation shall summarize the actions taken, the resources committed, the problems encountered in completion of the Project, if any, identify any institutional controls required, and document that the cleanup is complete and is protective of human health and the environment. This documentation shall be submitted to the City's QEP for review, comment, confirmation and approval.

3.18 Subgrantee understands that any use of the Property or any activity thereon which is inconsistent with the EPA Cooperative Agreements or any of the provisions herein is expressly prohibited.

Approval of Changes to Approved Response Plan. If Subgrantee desires to make any changes or a deviation from the nature and type of work described in the Approved Response Plan, Subgrantee shall submit such proposed changes, in writing, to MDNR, the QEP and the City for approval. Under no circumstances

shall the period of time to complete the Project be extended for more than twelve (12) months following commencement, or beyond the term of this Agreement, the period of availability of Agreement Funds, or the period of the EPA Cooperative Agreement. If such changes are approved, the Approved Response Plan shall then be deemed to include any approved changes. City, in consultation with its QEP, shall approve or disapprove the proposed change in writing in accordance with this Section. Subgrantee acknowledges that City approval of a change to the Approved Response Plan does not constitute an amendment of this Agreement to increase the amount of the Agreement Funds to pay for any increase in costs to perform the Approved Response Plan, as amended. This Agreement may only be amended as provided herein. No changes in the Approved Response Plan shall be conducted or implemented unless it is first approved, in writing, by MDNR, the QEP and the City. Nothing in this Section shall be construed to relieve Subgrantee of its obligations under any and all applicable laws regarding such changes. If, during the progress of the work, the City requests that the Approved Response Plan be changed to ensure that the cleanup of the Property is protective of human health and the environment, Subgrantee shall propose modifications to the Approved Response Plan for review by MDNR and the City. If approved, Subgrantee shall implement the changes.

3.19 **Property Access.** Subgrantee shall provide the City, MDNR and EPA access to the Property during the term of this Agreement. In the event Subgrantee does not complete the Project, the City may access the Property to ensure that the Property is secure and poses no immediate threat to human health and the environment and may notify EPA and MDNR, if applicable.

3.20 **Misrepresentation.** If approval of the Approved Response Plan or the changes to the Approved Response Plan delivered to City is based upon a willful and material misrepresentation of Subgrantee made in conjunction with the Approved Response Plan or changes to the Approved Response Plan, nothing in this Agreement shall be construed to preclude or limit the rights or claims of City with regard to such misrepresentation, including any rights City may have to rescind such approval, terminate this Agreement, or request return of funds paid.

3.21 **Conditions Precedent to Subgrant Disbursement.** In addition to any other provision governing disbursement herein, the City shall not disburse Agreement Funds, until the following conditions precedent have been satisfied:

3.21.1 Subgrantee has executed this Agreement.

3.21.2 Subgrantee has obtained all necessary permits and approvals.

3.21.3 Subgrantee is in compliance with the Approved Response Plan, the applicable terms and conditions of the EPA Cooperative Agreement (see Section 4), the Approved Subgrant Activities **(Exhibit G)**, the Approved Subgrant Budget **(Exhibit F)**, the Health and Safety Plan and the QAPP.

3.21.4 Subgrantee's contractors and subcontractors are in compliance with the applicable terms and conditions of the EPA Cooperative Agreement (see Section 5).

3.21.5 Subgrantee has issued a notice to proceed under its executed contract or contracts with its Contractor or Contractors.

4. **Federally-Required Terms and Conditions Applicable to Subgrantee.** Subgrantee acknowledges that it is subject to, and agrees to comply with, all applicable terms and conditions of the EPA Cooperative Agreements, which are hereby incorporated by reference into this Agreement. These terms and conditions have been re-drafted and modified for the convenience of the Subgrantee and are attached as **Exhibit C**. In the event of any discrepancy between the requirements of the provisions of **Exhibit C** and the applicable terms and conditions of the EPA Cooperative Agreement, the latter shall supersede the former.

5. **Federally-Required Terms and Conditions Applicable to Contractors/ Subcontractors.** Subgrantee shall incorporate into every one of its contracts funded, in whole or in part with Agreement Funds, all terms and conditions of the Cooperative Agreement applicable to contractors and subcontractors, which are hereby incorporated by reference into this Agreement. These terms and conditions have been re-drafted and modified for the convenience of the Subgrantee and are attached as **Exhibit E**. In the event of any discrepancy between the requirements of the provisions of **Exhibit E** and the terms and conditions of the Cooperative Agreement applicable to Subgrantee's contractors and subcontractors, the latter shall supersede the former. Furthermore, Subgrantee shall require in its contracts and subcontracts that such contractors comply with all applicable terms and conditions of the Cooperative Agreement, incorporate the same applicable terms and conditions into all contracts and subcontracts, and require subcontractors comply with such applicable terms and conditions.

6. **Compliance with Law.** Subgrantee shall carry out the Project in accordance with the provisions of this Agreement, the Approved Response Plan and in accordance with the applicable terms and conditions of the EPA Cooperative Agreement, and all other applicable federal, state and local laws and regulations. Subgrantee shall take all action and perform all tasks necessary to comply with the requirements of these laws and regulations. Subgrantee acknowledges that these requirements are incorporated into this Agreement.

6.1 **Payment and Performance Bond.** Subgrantee shall furnish a Payment Bond and Performance Bond (collectively hereinafter the "Bonds"), Subgrantee shall furnish such Bonds, each in an amount at least equal to the Agreement Funds, as security for the faithful performance and payment of all Subgrantee's obligations under the Agreement. These Bonds shall remain in effect at least until one (1) year after the date when final payment under the Agreement becomes due. All Bonds shall be in the form prescribed by the City, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates

of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of such agent's authority to act must accompany all Bonds signed by an agent. The Surety must be licensed by the State of Missouri to issue bonds in the State of Missouri and retain an A.M. Best rating of "B+, Class V" for Bonds in excess of $200,000. If the surety on any Bond furnished by Subgrantee is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of this Section, Subgrantee shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to City.

6.2 **Supervision of the Work.** Subgrantee shall be responsible for monitoring all work; ensuring that the work is performed by it contractor in compliance with the relevant authorities and all other applicable federal, state and local laws and in a professional and workmanlike manner and enforcing the terms of this Agreement applicable to its contractor and the Project contracts. Subgrantee shall provide its contractor with a copy of this Agreement.

7. Subgrant Provisions.

7.1 **Use of Agreement Funds.** Subgrantee shall use Agreement Funds only for those actions set out in the Approved Response Plan and in accordance with the Approved Subgrant Activities (**Exhibit G**).

7.2 **Disbursement Procedures.**

7.2.1 The Agreement Funds to be used for Project costs shall be disbursed to reimburse Subgrantee for approved Project costs actually incurred by Subgrantee upon presentation of the payable invoices and the QEP and City's review and approval of such costs.

7.2.2 Subgrantee shall request disbursements by providing to the City copies of contractor, subcontractor invoices and all other invoices and backup documentation of all eligible Project costs. Subgrantee shall ensure that contractor and subcontractor invoices or statements reflect the budget of the Approved Response Plan and identify tasks and breakdown costs in a similar manner, indicate costs incurred for the requested disbursement period, and show cumulative costs disbursed for prior periods and remaining balances for each task and the overall Project. Documentation shall be included to describe the nature of the services or items purchased, and the party(ies) who provided such services or items, and clearly identify the portions and totals of such services and items that are to be paid by the Subgrant, if any. Subgrantee shall provide satisfactory evidence of all obligations to pay Project costs. Satisfactory evidence may include payment vouchers, accounts payable records, images of cancelled or paid checks, and lien waivers.

7.2.3 The Subgrantee may request a maximum of one disbursement per month on forms provided by the City, and shall include documentation of work completed and eligible costs incurred by the Subgrantee.

7.2.4 Disbursements are contingent upon review by the QEP and City. Disbursements may be adjusted or disallowed entirely to the extent costs are determined by the City to be ineligible. Subgrantee shall submit invoices for Project costs incurred. The City shall either approve such invoices or notify Subgrantee of any questions or objections to the invoices. Upon satisfaction of the City's questions and/or objections, the City shall disburse Agreement Funds equal to the total of all of the approved invoices.

7.2.5 No disbursements shall be made to the Subgrantee without the written approval of the City. No disbursements shall me made for ineligible or unapproved costs.

7.2.6 The Parties understand and agree that the City is under no duty to provide any disbursement or funding of any kind other than what has been made available as Agreement Funds under this Agreement. The City is under no additional duty to provide monies of any kind, to the Subgrantee in the event that such funding, is exhausted or otherwise made unavailable.

7.3 **Financial Accounting.** Subgrantee shall maintain Project information, including properly executed contracts, invoices, correspondence and other documents, sufficient to evidence in detail the nature and propriety of all expenditures of Agreement Funds. In particular, Subgrantee shall:

7.3.1 Maintain an accounting system, and prepare and maintain all financial and programmatic records, pertaining to all matters relating to this Agreement in accordance with generally accepted accounting principles and procedures.

7.3.2 Track the use of Agreement Funds in accordance with Subgrantee's detailed cost breakdown of the Approved Response Plan and other items, if any, included in the Approved Subgrant Budget.

7.3.3 Maintain financial and Approved Response Plan records that segregate Project expenditures based on Agreement Funds or other (local cost share) sources of funds.

7.3.4 Submit to the City, within one hundred twenty (120) days after the close of each fiscal year of Subgrantee, year-end financial statements of Subgrantee containing a balance sheet, income statement and statement of cash flows and any audit report issued

with respect to such financial statements, beginning with the fiscal year the parties enter into this Agreement. Subgrantee shall provide the City, upon request by the City, any additional financial information relevant to, and supportive of, such financial statements and audits.

7.4 **Monitoring/Audit.** Subgrantee shall permit the City or its designated representative to inspect the Property and inspect and/or audit Subgrantee's records and books relating to the Property, this Agreement, any Approved Response Plan, or any Subgrant document at any time during normal business hours upon prior written notice and under reasonable circumstances, and to copy therefrom any information the City deems relevant to the Property, this Agreement, any Approved Response Plan document, or any Subgrant document. In addition, Subgrantee agrees that the Approved Response Plan documents, this Agreement, and the Subgrant documents are subject to records access provisions of 2 CFR Part 200, as applicable.

7.5 **Documentation Retention**. Subgrantee shall retain all of its Approved Response Plan environmental records and supporting documentation for a minimum of three (3) years following the Project completion. Subgrantee shall obtain written approval from the City prior to destroying any records, except records subject to audit findings shall be retained an additional three (3) years after such findings have been resolved. The City in writing may require that particular records be retained by Subgrantee beyond the above period(s).

8. City Obligations.

8.1 The City shall obligate the Agreement Funds for this Agreement.

8.2 Upon request, the City shall supply the Subgrantee with federal reporting forms.

8.3 The City shall provide Subgrantee with copies of all available reports and documents concerning the Property and a copy of all EPA Cooperative Agreements connected with the Grants.

8.4 As outlined by the terms of this Agreement, the City, through the QEP, shall review remedial planning, design, and engineering documents and monitor the cleanup activities as they are on-going to monitor that the Project is being completed in accordance with all local, state, and federal requirements and otherwise monitor compliance with applicable environmental laws and regulations and the terms and conditions of the EPA Cooperative Agreement.

8.5 The City shall be the single point of contact for purposes of all communication with the EPA concerning the Agreement or use of Agreement Funds.

8.6 The City acknowledges that the Subgrantee shall have sole control of the method, hours worked and time and manner of any performance under this Agreement other than as specifically provided herein. The City reserves the right to reasonably inspect the job site or premises to ensure that the performance is progressing or has been completed in compliance with the Agreement, but only in a manner so as not to disrupt or impede activities on the Property. The City takes no responsibility of supervision or direction of the performance of the Agreement to be performed by the Subgrantee or the Subgrantee's employees or agents. The City further agrees that it will exercise no control over the selection and dismissal of the Subgrantee's employees or agents.

9. Special Conditions

9.1 **Final Report.** The Subgrantee shall complete a final report, on forms available from the City, documenting the activities completed with the funds awarded under this Agreement. The Subgrantee shall submit any reports or documents that were created for or funded by this Subgrant as a component of the final report, as required by the City. The report shall be submitted to the City along with the final request for payment under this Agreement.

9.2 **Quarterly Progress Reports.** The Subgrantee shall furnish written progress reports to the City on a quarterly basis during the cleanup. The reports are due on April 15, July 15, October 15 and January 15 of each year. City may request Subgrantee to provide additional or supplemental information, at any time.

9.3 **Changes to Project Scope or Budget.** If the Subgrantee determines that they will not need to use the full amount of their grant award, the Subgrantee shall notify the City in writing as soon as possible such that excess funds may be allocated to another project.

9.4 **Property Access.** The Subgrantee shall have legal and physical access to the Property to conduct all the activities described in the Approved Subgrant Activities for the duration of this Agreement. If circumstances change resulting in reduction of access, the Subgrantee shall notify the City immediately in writing.

9.5 **No Effect On State Laws and Regulations.** Any and all actions conducted as part of this Project shall follow the procedures and requirements of Missouri state law and regulations, including any risk-based corrective action rule, and/or process guidance document, issued by MDNR. Nothing in this Agreement shall entitle the Subgrantee, its agents, contractors, or assigns to any special rights, privileges, licenses, liability exemptions, or obligations regarding their responsibility to undertake actions related to the Project or the Property under applicable state laws or regulation, or any other state or federal environmental laws.

10. Indemnification.

10.1 For purposes of this Section only, the following terms shall have the meanings listed:

10.1.1 “Claims” means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys’ fees incurred by the City in the enforcement of this indemnity obligation.

10.1.2 “Subgrantee's Agents” means Subgrantee's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.

10.1.3 “City” means City and its agents, officials, officers and employees.

10.1.4 “City Agents” does not include contractors or consultants under contract to the City to provide goods or services or perform work in connection with this Agreement.

10.2 Subgrantee shall, and contractually obligate any of its contractors and subcontractors to, save, keep harmless, defend and indemnify the City and all its officers, officials, employees and agents, against any and all claims and costs of whatever kind and nature, including for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Agreement or omissions of the Subgrantee’s employees, agents or representatives regardless of whether or not caused in part by any act or omission, including negligence, of City. Subgrantee shall ensure this indemnification language is included in all contracts and subcontracts related to work to be done under this Agreement.

10.3 In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

11. Insurance and Public Safety Protections.

11.1 Insurance; Generally. Subgrantee shall at all times during the term of this Agreement maintain insurance and cause its contractors and subcontractors to maintain insurance which meets the requirements enumerated in this Agreement. All policies of liability insurance maintained by Subgrantee hereunder shall name the City as an additional insured, and all policies of liability insurance maintained by Subgrantee’s contractors and subcontractors hereunder shall name Subgrantee

and City as additional insureds. Subgrantee shall upon request of the City at any time furnish to the City updated evidence of insurance for such insurance. Subgrantee's failure to maintain the required insurance coverage will not relieve Subgrantee of its contractual obligation to indemnify the City pursuant to this Agreement. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

11.2 Subgrantee shall promptly take steps to protect its contractors, contractor's employees and the public from the risk of injury whether from the condition of the Property or Subgrantee's activities in connection with the Property. Subgrantee shall contractually require its contractor(s) and subcontractor(s) to purchase and maintain the following insurance for claims which may result from the operations under this Agreement by Subgrantee, contractor, any subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.2.1 **Commercial General Liability Insurance**. A commercial general liability insurance policy with limits of $1,000,000.00 per occurrence and $1,000,000.00 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- Severability of interests coverage applying to additional insureds.
- Contractual liability.
- Per project aggregate liability limit, or where not available, the aggregate limit shall be $2,000,000.00.
- Non-contractual liability limitation endorsement.
- Additional insured endorsement, ISO form CG2010, current edition or its equivalent.

11.2.2 **Worker's Compensation Insurance**. Worker's Compensation Insurance policies as required by applicable statutes, including employers' liability with limits of:

Worker's Compensation	Statutory
Employers' Liability	$100,000 each accident
with limits of:	$500,000 disease-policy limit
	$100,000 disease-each employee

11.2.3 **Commercial Automobile Liability Insurance.** Commercial automobile insurance liability insurance policy with a limit of $1,000,000.00 per occurrence, covering owned, hired and non-owned automobiles, which coverage shall be on an "any auto" basis and written on an "occurrence" basis. This insurance policy will be written on a

Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, with respect to acts done in connection with this Agreement by Subgrantee.

11.3 All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

11.4 Regardless of any approval by City, it is the responsibility of Subgrantee to contractually require its contractor(s) and any of contractor's subcontractors maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Subgrantee's contractor(s) and contractor's subcontractors' failure to maintain the required insurance in effect, City may order Subgrantee to immediately stop work and, upon fourteen (14) days' notice and any opportunity to cure, pursue any of its remedies for breach of this Agreement as provided for herein or otherwise provided by law.

12. Signage. Subgrantee shall erect sign(s) on the Property stating that the Cleanup Action Plan is being financed in part by a EPA Brownfields Revolving Loan Fund Grant and the City of Kansas City, Missouri. Associated required signage must include contacts for obtaining information on activities being conducted on the Property and for reporting Davis-Bacon Act compliance, suspected criminal activities, and non-compliance with health & safety rules. Any sign(s) erected on the Property shall comply with all requirements of the State and local law applicable to on-premise outdoor advertising.

13. Prohibition Against Conveyance, Assignment and Transfer. Any and all conveyances, assignments or transfers by Subgrantee of Subgrantee's interests under this Agreement are prohibited, except upon City's prior written approval.

14. Tax Compliance. Subgrantee shall, and contractually require its contractor(s) and any subcontractors to, provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this Agreement or any renewal when the total Agreement amount exceeds the threshold amount listed in the Code of Ordinances, City of Kansas City, Missouri § 2-1599, inclusive of any yearly cost adjustment made pursuant to § 2-1602. If Subgrantee or Contractor or Contractor's subcontractor performs work under this Agreement that is for a term longer than one (1) year, the subcontractor shall contractually require contractor and/or subcontractor to submit to the City proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a condition precedent to the City making final payment under the Agreement.

15. Defaults and Remedies. A failure or delay by Subgrantee to perform any term or provision of this Agreement constitutes a default of this Agreement. If Subgrantee shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance, withhold payment or invoke any other legal or

equitable remedy after giving Subgrantee seven (7) days written notice and opportunity to cure such default or breach.

16. US Environmental Protection Agency (EPA) Contract Requirements. The following documents are Attachments to this Agreement and are attached hereto and incorporated herein by this reference:

Exhibit D - Certifications Required By USEPA Cooperative Agreement

EPA Certification Regarding Lobbying

Employee Eligibility Verification

In addition, Subgrantee certifies that Subgrantee and, based upon representations made by its Contractor(s) and subcontractor(s), that Subgrantee's Contractor(s) and subcontractor(s):

16.1 Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from Federal, State or local transactions (hereinafter individually a "public transaction"); and

16.2 Have not been rescinded or debarred from any bidding, contractual, procurement and/or non-procurement programs or other such programs with the United States Government as identified by the U.S. General Services Administration Office of Acquisition Policy; and that the Subgrantee has not been similarly rescinded or debarred from any bidding, contractual, procurement or other such programs of the State of Missouri; and

16.3 Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of (a) fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; (b) violation of federal or state antitrust; (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; or (d) making false statements or receiving stolen property; and

16.4 Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any offense; and

16.5 Have not within the preceding three years had a public transaction terminated for cause or default.

17. Environmental Compliance. Subgrantee certifies that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the Property. Subgrantee shall contractually require its Contractor(s) and subcontractor(s) to conduct response activities in accordance with all applicable federal, state and local laws and the terms and conditions of the Cooperative Agreements, and will modify the cleanup activities, as necessary and as determined by MDNR, the QEP and the City, based on

unforeseen site conditions or public involvement requirements. Subgrantee is responsible for obtaining all necessary permits to do the work contemplated under this Agreement.

18. General Provisions.

18.1 **Time for Actions.** City and Subgrantee shall each do the actions required of them, on or before the times specified in this Agreement.

18.2 **Entire Agreement**. This Agreement and the exhibits attached hereto, integrates all of the terms and conditions related or previous agreements between the parties with respect to its subject matter.

18.3 **Waivers and Amendments**. All waivers of the provisions of this Agreement must be in writing and signed by the City or Subgrantee, as the case may require, and all amendments hereto must be in writing and signed by the City and Subgrantee.

18.4 **Nonliability of City Officials and Employees**. No member, official or employee of City shall be personally liable to Subgrantee, or any successor in interest for any amount which may become due to Subgrantee or its successors, or on any obligations under the terms of this Agreement.

18.5 **Notices and Demands**. A notice, demand or other communication under this Agreement shall be in writing and shall be sufficiently given or delivered if it is dispatched by certified mail, postage prepaid, return receipt requested to the address set out below, or at such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided for a notice under this Section. Any communication to City shall be prominently marked: **"URGENT. ATTENTION: BROWNFIELDS REVOLVING LOAN FUND PROGRAM."** Written notice will be effective immediately if personally delivered, or, if sent by certified mail, such notice will be effective **48** hours after deposit into the U.S. Mail. Notice addresses are as follows:

For Subgrantee:

Negro Leagues Baseball Museum, Inc.
1616 E. 18th Street
Kansas City, MO 64108
Attention: Bob Kendrick, President

For City:

City of Kansas City, Missouri
Department of City Planning & Development
414 E. 12th Street, 15th Floor
Kansas City, MO 64106-2795
Attention: Jeffrey S. Williams, AICP, Director

With copy to:

City of Kansas City, Missouri
Department of City Planning & Development
414 E. 12th Street, 16th Floor
Kansas City, MO 64106-2795
Attention: Andrew Bracker, Brownfields Coordinator

For QEP:

Family Environmental Compliance Services, Inc.
600 East 8th Street, Suite B
Kansas City, MO 64106
Attention: Michael Dustman

18.6 **Subgrantee Information and Reports.** Subgrantee shall provide to City such information as is reasonably necessary for City to determine the status of the Project and the Subgrant including, but not limited to, financial statements. Semiannual requests for financial statements shall be presumed to be reasonably necessary, and any information the City needs to report pursuant to the reporting requirements of the RLF Grant shall be delivered to City by Subgrantee. All information required for preparation of documents concerning the Subgrant, including the Response to Public Comments, the Decision Document, and the On-Scene Coordinator Report, shall be provided to City and QEP by Subgrantee upon request.

18.7 **Access.** Subgrantee shall provide, and ensure that the Contractor provides to City and to MDNR and to their respective representatives access to the Property at any reasonable time to inspect site conditions and activities related to the performance of the Approved Response Plan.

18.8 **Section Headings; Construction.** The headings of sections and subsections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All references to "herein" or "hereof" shall mean this Agreement. All words used in this Agreement will be construed to be of such gender or number, as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

18.9 **Governing Law.** This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

SIGNATURE PAGES TO FOLLOW

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

SUBGRANTEE:

NEGRO LEAGUES BASEBALL MUSEUM, INC.

By: _____
Name: Bob Kendrick
Title: President
Date: _____

ACKNOWLEDGEMENT

State of Missouri)
)ss
County of _____)

On this ____ day of _____, 2016, before me, a Notary Public in and for the County and State aforesaid, personally appeared Bob Kendrick in his capacity as President for Negro Leagues Baseball Museum, Inc., who, being duly sworn, did execute the foregoing instrument by virtue of the authority vested in him in his capacity as President, and he acknowledged the said instrument to be the free act and deed of Negro Leagues Baseball Museum, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year last above written.

_____
Notary Public

My commission expires: _____

CITY OF KANSAS CITY, MISSOURI

By: _____
Name: Jeffrey S. Williams, AICP
Title: Director, City Development Department
Date: _____

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

_____
Randall J. Landes
Director of Finance

Approved as to form:

_____
Matthew Gigliotti
Assistant City Attorney

EXHIBITS TO SUBGRANT AGREEMENT

The following documents are Attachments to this Agreement and are attached hereto and incorporated herein by this reference.

EXHIBIT	NAME OF EXHIBIT
A	Legal Description
B	Summary of Site Conditions
C	Terms and Conditions of the EPA Cooperative Agreement Applicable to Subgrantee
D	Certifications Required By USEPA Cooperative Agreement
E	Terms And Conditions Of EPA Cooperative Agreement Applicable to Contractors and Subcontractors
F	Approved Subgrant Budget
G	Approved Subgrant Activities

EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this Loan Agreement is situated in the State of Missouri, Jackson County, and is described as follows:

Lots 84, 85, 86, 87 and 88, inclusive, subject to that part thereof in Paseo Boulevard, Block 4, ARMFIELDS ADDITION, a subdivision in Kansas City, Jackson County, Missouri, AND Lot 2, subject to that part thereof in Paseo Boulevard, BRENTS ADDITION, a subdivision in Kansas City, Jackson County, Missouri.

EXHIBIT B

SITE CONDITIONS

BACKGROUND

The site is a 0.772 acre property located at 1824 Paseo Blvd. On the property is the Former Paseo YMCA building. The structure was originally built in 1914 and consists of a four-story (plus basement) brick, seven-bay building. A rear wing was built with a large gymnasium and in the basement was a concrete swimming pool. Total square footage is approximately 33,000.

The building is listed on the National Register of Historic Places and is located in the historic 18th and Vine Jazz District. It is recognized as the site where the Negro Baseball Leagues were founded in 1920. The building continued in operation until it closed in the 1970s and has been mostly vacant since.

The owner, Negro Leagues Baseball Museum, Inc. (NLBM) plans to renovate the building as an expansion of its existing museum facilities. The John "Buck" O'Neil Education and Research Center will incorporate interactive technology, exhibits and research facilities for visitors, students, researchers, and fans of the Negro Leagues.

PAST ENVIRONMENTAL CONDITIONS

The structure has had previous brownfield and environmental cleanup activity. In 2005, NLBM received a $165,047 EPA Brownfields Cleanup Grant to abate asbestos containing materials (ACM), aviary waste and household hazardous wastes (HHW) from the facility. The Site was enrolled into the Missouri Brownfields Voluntary Cleanup Program (BVCP) in 2005.

Most of the ACM was removed except for some window caulking and roof flashing materials. A heating tank was also removed from the basement, but no further cleanup activity occurred due to a lack of funds. In 2008, remaining grant funds were returned to EPA and the MDNR terminated the site from the BVCP for inactivity.

CURRENT STATUS

On or about July 25, 2016, MDNR accepted the Paseo YMCA back into the BVCP program and sent NLBM a letter agreement and request for a fee deposit. It is anticipated that the $19,200 in local match funds required for the subgrant will be supplied by recent City $7 million in bond funding made available to the 18th & Vine Jazz District and the Paseo YMCA project in particular.

Structural Conditions

Asbestos-Containing Materials (ACM)

An Asbestos-Containing Materials (ACM) Inspection Report prepared by Titan Environmental Services, Inc. dated April 15, 2014 verified that all ACM has been removed from the building with the sole exception of approximately 60 square feet of 9" x 9" floor tile and mastic on the 2nd floor.

Household Hazardous Waste (HHW)

A Phase I environmental site assessment (ESA) performed by Titan Environmental Services, Inc. dated April 14, 2014 found no household wastes in the YMCA building but noted that miscellaneous household wastes were stored in a 55-gallon polyurethane drum outside in the dirt lot. The drum no longer appears to be located on the property.

Lead-Based Paint (LBP)

A Lead-Based Paint Inspection report prepared by Titan Environmental Services, Inc. dated April 10, 2014 confirmed the presence of unstable lead-based paint (LBP) surfaces throughout the former YMCA building. In May 2014, a partial cleanup of LBP surfaces was performed by Titan in the first floor, stairwell and portions of the basement. A Lead-Based Paint Stabilization Close-Out Report prepared by Titan Environmental Services, Inc. dated May 15, 2014 indicates that these LBP surfaces were stabilized and confirmation samples indicate the remediation was effective. These areas were then renovated for use by NLBM. LBP surfaces on the second, third and fourth floors, and in portions of the basement were not addressed and those areas remain off-limits.

EXHIBIT C

TERMS AND CONDITIONS OF THE EPA COOPERATIVE AGREEMENT
APPLICABLE TO SUBGRANTEE

EXHIBIT C

TERMS AND CONDITIONS OF EPA COOPERATIVE AGREEMENT BF-97700901-A

APPLICABLE TO BORROWERS AND SUBGRANT RECIPIENTS

Administrative Conditions

1. General Terms and Conditions – See Attachment "EPA General Terms and Conditions Effective December 26, 2014."

2. Payment Frequency – Not Applicable.

3. DBE Reporting Requirements

GENERAL COMPLIANCE, 40 CFR, Part 33

The City agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

BORROWER agrees to complete and submit to CITY information regarding its MBE and WBE Utilization using federal grant funds as necessary to enable CITY to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30 of each year. Final reports are due by October 30 whichever comes first or 90 days after the end of the project period,

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40

CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

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

The BORROWER accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **MISSOURI DEPARTMENT OF NATURAL RESOURCES (MDNR**) as follows:

Missouri	MBE	WBE
Services	10%	5%
Supplies	10%	5%
Equipment	10%	5%
Construction	10%	5%

By signing this AGREEMENT, the BORROWER is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **MDNR**.

Negotiating Fair Share Objective/Goals, 40 CFR. Section 33.404. Not Applicable.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the BORROWER agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

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

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

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

tasks or quantities to permit maximum participation by DBEs in the competitive process.

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

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

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

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302
The BORROWER agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)[1]
The CITY, as a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, requires BORROWER to create and maintain a bidders list pursuant to 40 CFR, Section 33.501(b) and (c). BORROWERS receiving identified loans shall create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Programmatic Conditions

1. Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions.

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Not Applicable.

2. Work done by BORROWER or SUBGRANTEE with Agreement funds shall comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). BORROWER or SUBGRANTEE shall ensure that cleanup activities supported with Agreement funding comply with all applicable Federal and State laws and regulations. BORROWER or SUBGRANTEE shall ensure cleanups are protective of human health and the environment.

[1] If BORROWER is not subject to, or chooses not to follow, competitive bidding requirements (i.e., is a private or nonprofit borrower) the bidders list requirements do not apply.

3. The City will consider whether it is required to have BORROWER or SUBGRANTEE conduct cleanups through a State or Tribal response program. If the City chooses not to require BORROWER or SUBGRANTEE to participate in a State or Tribal response program, then the City will consult with the Environmental Protection Agency (EPA) on each loan or subaward to ensure the proposed cleanup is protective of human health and environment.

II. SITE/BORROWER/SUBRECIPIENTS ELIGIBILITY[2]

A. Brownfields Site Eligibility

1. The CITY 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, whether the CITY is the potentially responsible party under CERCLA 107 and/or has defenses to liability.

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

3. For any petroleum-contaminated brownfields site, the CITY will 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 November 2013 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

[2] BORROWER or SUBGRANTEE shall provide the CITY complete, timely and accurate information, as requested, concerning eligibility criteria as provided by subsections II.A., II.B. and II.C., below. BORROWER shall promptly notify the CITY if any such information changes during the AGREEMENT period. If any of the eligibility criteria are not met during the AGREEMENT period, BORROWER may be prohibited from receiving funds under the AGREEMENT.

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 CITY 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 CITY will 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 CITY will contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subrecipient Eligibility

1. The CITY may only provide cleanup subawards to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of subawards. Eligible subrecipients 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 subawards.

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

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

5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site (e.g., BORROWER or SUBGRANTEE) 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 CITY will maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subrecipients.

7. A BORROWER or SUBGRANTEE must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subaward. The CITY, in consultation with the EPA, will consider this history in its analysis of the borrower or subrecipient as a cleanup and business risk.

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

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

1. BORROWER or SUBGRANTEE who is eligible, or seeks to become eligible, to receive a grant, loan, or subaward 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 BORROWER or SUBGRANTEE. These include, but are not limited to the following:

    a. BORROWER or SUBGRANTEE 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. BORROWER or SUBGRANTEE seeking to qualify as bona fide prospective purchaser or contiguous property owner 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 (e.g., BORROWER or SUBGRANTEE), 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 – Not Applicable

B. Substantial Involvement – Not Applicable.

C. Cooperative Agreement Recipient Roles and Responsibilities

Items 1. – 6. Not applicable.

7. 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 www.fgdc.gov.

8. Cybersecurity Requirements

(a) BORROWER agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

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

(2) The CITY agrees that any subawards it makes under this agreement will require the SUBGRANTEE to comply with the requirements in (b)(1) if the SUBGRANTEE'S network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during SUBGRANTEE monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the SUBGRANTEE has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a SUBGRANTEE or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

D. Quarterly Progress Reports[3]

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, 200.328 *monitoring and reporting program performance*), the CITY is required to submit quarterly progress reports to the EPA Project Officer within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a

[3] BORROWER or SUBGRANTEE shall provide the CITY complete, timely and accurate information, as requested, concerning the progress of its cleanup project to assist City in complying with Quarterly Progress Reporting obligations as provided by subsection III.D.

comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

Quarterly progress reports must clearly differentiate which activities were completed with EPA funds provided under this brownfield assessment cooperative agreement versus any other funding source used to help accomplish cooperative agreement activities.

In addition, the report shall include brief information on each of the following areas: 1) a comparison of actual accomplishments to the anticipated outputs/outcomes specified in the cooperative agreement work plan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. The CITY agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the cooperative agreement work plan.

2. The CITY must submit progress reports 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 subawards 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.

3. 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.

4. In accordance with 2 CFR 200.328(d)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission[4]

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

[4] BORROWER or SUBGRANTEE shall provide the CITY complete, timely and accurate information, as requested, concerning the progress of its cleanup project to assist City in complying with Property Profile reporting obligations as provided by subsection III.E.

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[5]

The CAR must submit a final report within 90 days after the end of the period of performance in order to finalize the closeout of the grant. The final report may be submitted in lieu of a final quarterly report with approval from the EPA Project Officer. 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.

G. Work Product and Report Submission Format

BORROWER or SUBGRANTEE shall ensure that its work products and reports provided to CITY shall be submitted in an electronic format acceptable to EPA, unless otherwise approved by the EPA project officer. Current acceptable formats include Microsoft WORD, Microsoft EXCEL or Portable Document (PDF).

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

CERCLA § 104(k)(9)(B)(iii) requires BORROWER or SUBGRANTEE 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 Subrecipients[6]

1. Eligible Programmatic Expenses. Not Applicable.

2. The CITY may use EPA Cooperative Agreement Funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses.

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[5] BORROWER or SUBGRANTEE shall provide the CITY complete, timely and accurate information, as requested, concerning the final outcome of its cleanup project to assist City in complying with Final Reporting obligations as provided by subsection III.F.

[6] BORROWER or SUBGRANTEE is not authorized to use Agreement funds for any programmatic expenses without prior express written authorization by CITY.

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 (ABCA) 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 ABCA must consider site characteristics, surrounding environment, land-use restrictions, potential future uses, and cleanup goals. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis;

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 BORROWER or SUBGRANTEE activities to ensure compliance with applicable Federal and State environmental requirements;

i. Ensuring that the site is secure if BORROWER or SUBGRANTEE 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 CITY in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subawards; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subrecipients; and

l. SUBGRANTEE progress reporting to the CITY is an eligible programmatic cost.

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

C. Ineligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients

1. Cooperative agreement funds shall not be used by the BORROWER or SUBGRANTEE 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 2 CFR Parts 200 and 1500.

2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this Agreement. Prohibited administrative costs include all indirect costs incurred by the CITY and BORROWER or SUBGRANTEE under 2 CFR 200 Subpart E.

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 Requirement for Cost Principles and Audit Requirements for Federal Awards at 2 CFR 200 and 1500. Direct costs for grant and subaward administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the BORROWER or SUBGRANTEE is required to carry out the activity under the Agreement.

b. Ineligible grant or subaward administration costs include direct costs for:

i. Preparation of applications for Brownfields grants and subawards;

ii. Record retention required under 2 CFR Parts 200.333-337 and 1500.6;

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

iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308 and 2 CFR 1500.8;

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

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

vii. Non-federal audits required under 2 CFR 200 Subpart F; and

viii. Close out under 2 CFR 200.343.

ix. BORROWER or SUBGRANTEE is subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. BORROWER or SUBGRANTEE is prohibited from using Agreement funds for administrative costs.

c. Prohibited administrative costs for the BORROWER or SUBGRANTEE (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 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 or SUBGRANTEE 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 or SUBGRANTEE'S administrative offices; and

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

iv. Costs incurred by the BORROWER or SUBGRANTEE 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 or SUBGRANTEE for progress reporting to the CITY are eligible programmatic costs.

3. (This section number is missing in the EPA Cooperative Agreement.)

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.

D. Use of Program Income – Not Applicable

E. Post Cooperative Agreement Program Income – Not Applicable

F. Interest-Bearing Accounts

1. The CITY 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 subrecipients are subject to the provisions of 2 CFR 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.

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

G. Leveraging

The BORROWER or SUBGRANTEE agrees to exercise its best efforts to secure the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its RLF loan or subgrant application. If the proposed leveraging does not materialize during the period of the EPA Cooperative Agreement, and BORROWER or SUBGRANTEE does not provide a satisfactory explanation, EPA may consider this factor in evaluating future proposals from the CITY. In addition, if the proposed leveraging does not materialize during the period of the EPA Cooperative Agreement, EPA may reconsider the legitimacy of the federal award; if EPA determines that the CITY knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its proposal dated April 23, 2015. EPA may take action as authorized by 40 CFR Parts 30 or 31 and/or 2 CFR Part 180 as applicable.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. BORROWER or SUBGRANTEE shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

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

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the BORROWER or SUBGRANTEE shall comply with 2 CFR 1500.11 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. Individual or generic Quality Assurance Project Plans (QAPPs) for activities within the scope of this agreement must be submitted for EPA approval prior to the collection of environmental samples. EPA may request assistance from a state program with the review and approval of QAPPs for non-state EPA CARs. For this to occur, the state program must be authorized through an approved Quality Management Plan (QMP), to review and approve QAPPs in lieu of EPA. Review and approval of non-state EPA Brownfields CITY QAPPs by a state program will be limited to those instances where there is mutual agreement among the parties involved (the state, EPA, and the CITY), and the non-state EPA CITY agrees to participate in and follow the guidelines established within the State Response Program. Oversight of the state's QAPP approval process for Brownfields will be part of the Management Systems Review (MSR) process described in EPA Region 7's QMP. All QA documents will be prepared in accordance with current EPA requirements as defined in EPA Requirements for Quality Assurance Project Plans: EPA QA/R-5 (EPA/240/B-01/003, March 2001) and Guidance for Quality Assurance Project Plans: EPA QA/G-5(EPA/240/r-02/009, December 2002) or their subsequent revisions.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subaward 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.

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

   a. If any document, fact sheet, and/or web material are developed as part of this cooperative agreement, then they shall include the following statement: "Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of the EPA."

   b. If a sign is developed, as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at: http://www.epa.gov/ogd/tc.htm.

   c. Public or Media Events
   BORROWER or SUBGRANTEE agrees to notify the CITY and the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and

provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

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

D. Administrative Record

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

2. If the BORROWER or SUBGRANTEE is unable or unwilling to complete the RLF cleanup, the CITY shall ensure that the site is secure. The CITY 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

The CITY 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 Subaward Practices – Not Applicable

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

1. The CITY shall ensure that BORROWER or SUBGRANTEE meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subawards:

a. BORROWER or SUBGRANTEE 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. BORROWER or SUBGRANTEE shall ensure that the cleanup protects human health and the environment.

c. BORROWER or SUBGRANTEE shall document how funds are used. If a loan or subaward includes cleanup of a petroleum-contaminated brownfields site(s), the CITY shall include a term and condition requiring that the borrower or subrecipient maintain separate records for costs incurred at that site(s).

d. BORROWER or SUBGRANTEE shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subrecipients shall obtain written approval from the CITY prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subrecipient provide access to records relating to loans and subawards supported with RLF funds to authorized representatives of the Federal government.

e. BORROWER or SUBGRANTEE 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. BORROWER or SUBGRANTEE 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 SUBGRANTEE must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, BORROWER or SUBGRANTEE 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 CITY may consult with EPA for assistance with this matter.

g. BORROWER or SUBGRANTEE shall conduct cleanup activities as required by the CITY.

h. SUBGRANTEE shall comply with applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subaward funds must comply with Procurement Standards of 2 CFR 200.317 through 200.326, as applicable.

i. A term and condition or other legally binding provision shall be included in all loans and subawards 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 BORROWER or SUBGRANTEE comply with all applicable Federal and

State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 2 CFR Parts 200 and 1500.

j. BORROWER or SUBGRANTEE 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.

k. Federal cross-cutting requirements include, but are not limited to, DBE 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

In the event of a loan default, the CITY 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 CITY 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 – Not Applicable

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT – Not Applicable

2. Davis Bacon Prevailing Wage Term and Condition For Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations

The following terms and conditions specify how CITY will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA .financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, it may contact Lee A. Thomas at (913) 551-7739 or via email at Thomas.LeeA@epa.gov for guidance. The CITY may also obtain additional guidance from DOL's web site http://www.dol.gov/esa/whd/recovery/

1. Applicability of the Davis Bacon prevailing wage requirements.

For the purposes of this term and condition, EPA has determined that the all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. With regard to remediation of petroleum

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

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

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

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

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other cleanup activities at brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if the CITY encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the CITY must discuss the situation with EPA before authorizing work on that site.

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

2. Obtaining Wage Determinations.

(a) The CITY is responsible for obtaining Davis-Bacon ("DB") wage determinations from the Department of Labor ("DOL") and ensuring the borrowers and subgrantees include the correct wage determinations in solicitations for competitive contracts by way of requests for bids, proposals, quotes or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments).
(b) Unless otherwise instructed by EPA on a project specific basis, the CITY shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. The CITY must obtain wage determinations for specific localities at www.wdol.gov.

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

(ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment. and abatement or contamination in

buildings (other than residential structures less than 4 stories in height) the CITY shall use "Building Construction" classification.

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

(iv) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the CITY shall use the "Building Construction" classification.

(v) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CITY shall use the "Heavy Construction" classification.

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

(c) The CITY shall comply with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The CITY must ensure that prime contracts entered into by the BORROWER contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the BORROWER's solicitation remains open, the CITY shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CITY shall require that the BORROWER 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 CITY may, on behalf of the BORROWER, request a finding from EPA that there is not reasonable time to notify interested contractors of the modification of the wage determination.

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

(iii) If the BORROWER carries out Brownfields cleanup activity subject to Davis-Bacon by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CITY shall ensure that the BORROWER inserts the appropriate DOL wage determination from www.dol.gov into the ordering instrument.

(d) The CITY 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.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a BORROWER's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the BORROWER 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 CITY will require that the BORROWER 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 BORROWER shall compensate the contractor for any increases in wages resulting from the use of DOL's revised wage determination. The CITY may, but is not required to, provide additional loan or subgrant funds to the BORROWER for this purpose.

3. Contract and Subcontract Provisions.

(a) The CITY shall ensure that BORROWER inserts 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 Davis-Bacon, 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 City 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)(l)(iv) of this section; also, regular contributions made or costs incurred far 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)(l)(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. The BORROWER shall require that the contractor and subcontractors include the name of the City employee or official responsible for monitoring compliance with DB on the poster.

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, ***and the CITY and the BORROWER*** *do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the CITY will provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. The Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the CITY take appropriate action to implement the Administrator's determination.*

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

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

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

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section l(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)(l)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the BORROWER and to the City who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on

weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City 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 City.

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice

classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause

requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

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

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

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

(10) Certification of eligibility.

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

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

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

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

(a) Contract Work Hours and Safety Standards Act. The CITY shall ensure that BORROWER or SUBGRANTEE 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 CITY will upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the BORROWER, 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 City will 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 CITY 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 EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

Note: The CITY may require the BORROWER verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. The CITY must ensure that BORROWER understands the compliance verification requirements and can interpret prevailing wage determinations properly before placing the responsibility for compliance verification on BORROWER. Moreover, the CITY remains accountable to EPA for ensuring that the BORROWER's or SUBGRANTEE's contractors and subcontractors comply with DB.

(a) The CITY will periodically interview, or require that BORROWER 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 CITY will use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CITY will 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 CITY will 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. The CITY will 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. The CITY shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a BORROWER. All interviews shall be conducted in confidence.

(c). CITY shall conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The City shall establish and follow a spot check schedule based on an assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CITY will 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. The CITY will 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 CITY shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The CITY 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) The CITY will immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at: *http://www.dol.gov/esa/contacts/whd/america2.htm*.

EXHIBIT D

US EPA CONTRACT REQUIREMENTS

1. EPA Form 6600-06 - Certification Regarding Lobbying.

2. Employee Eligibility Verification Affidavit.

United States
Environmental Protection Agency

EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Typed Name & Title of Authorized Representative

_____
Signature and Date of Authorized Representative

EMPLOYEE ELIGIBILITY VERIFICATION AFFIDAVIT

(Required for any contract with the City of Kansas City, Missouri in excess of $5,000.00)

STATE OF __Missouri_____)
) ss
COUNTY OF __Jackson_____)

On this _____ day of __ _____, 2016, before me appeared _____ _____, personally known by me or otherwise proven to be the person whose name is subscribed on this affidavit and who, being duly sworn, stated as follows:

I am of sound mind, capable of making this affidavit, and personally swear or affirm that the statements made herein are truthful to the best of my knowledge. I am the _____ (title) of _____ (business entity) and I am duly authorized, directed or empowered to act with full authority on behalf of the business entity in making this affidavit.

I hereby swear or affirm that the business entity does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. § 1324a(h)(3).

I hereby additionally swear or affirm that the business entity is enrolled in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986, and that the business entity will participate in said program with respect to any person hired by the business entity to perform any work in connection with the contracted services. I have attached hereto documentation sufficient to establish the business entity's enrollment and participation in the required electronic verification of work program.

I am aware and recognize that unless certain contractual requirements are satisfied and affidavits obtained as provided in Section 285.530, RSMo, the business entity may face liability for violations committed by its subcontractors, notwithstanding the fact that the business entity may itself be compliant.

I acknowledge that I am signing this affidavit as the free act and deed of the business entity and that I am not doing so under duress.

_____
Affiant's signature

Subscribed and sworn to before me this _____ day of _____, 2016.

_____
Notary Public

My Commission expires:

EXHIBIT E

TERMS AND CONDITIONS OF THE EPA COOPERATIVE AGREEMENT
APPLICABLE TO CONTRACTORS AND SUBCONTRACTORS

EXHIBIT E

TERMS AND CONDITIONS OF EPA COOPERATIVE AGREEMENT BF-97700901-A

APPLICABLE TO CONTRACTORS

Administrative Conditions

1. General Terms and Conditions – See Attachment "EPA General Terms and Conditions Effective December 26, 2014."

2. Payment Frequency – Not Applicable.

3. DBE Reporting Requirements

GENERAL COMPLIANCE, 40 CFR, Part 33

CONTRACTOR agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

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

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

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

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

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

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

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

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

Programmatic Conditions

1. Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions.

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Not Applicable.

2. Work done by CONTRACTOR with Agreement funds shall comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). CONTRACTOR shall ensure that cleanup activities supported with Agreement funding comply with all applicable Federal and State laws and regulations. CONTRACTOR shall ensure cleanups are protective of human health and the environment.

3. Not Applicable.

II. SITE/BORROWER/SUBRECIPIENTS ELIGIBILITY - Not Applicable.

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement – Not Applicable

B. Substantial Involvement – Not Applicable.

C. Cooperative Agreement Recipient Roles and Responsibilities

Items 1. – 6, 8. Not applicable.

7. 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 www.fgdc.gov.

D. Quarterly Progress Reports[1]

[1] CONTRACTOR shall provide the CITY complete, timely and accurate information, as requested, concerning the progress of its cleanup project to assist City in complying with

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, 200.328 *monitoring and reporting program performance*), the CITY is required to submit quarterly progress reports to the EPA Project Officer within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

   Quarterly progress reports must clearly differentiate which activities were completed with EPA funds provided under this brownfield assessment cooperative agreement versus any other funding source used to help accomplish cooperative agreement activities.

   In addition, the report shall include brief information on each of the following areas: 1) a comparison of actual accomplishments to the anticipated outputs/outcomes specified in the cooperative agreement work plan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. The CITY agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the cooperative agreement work plan.

2. The CITY must submit progress reports 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 subawards 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.

3. 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.

4. In accordance with 2 CFR 200.328(d)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

Quarterly Progress Reporting obligations as provided by subsection III.D.

E. Property Profile Submission[2]

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[3]

The CAR must submit a final report within 90 days after the end of the period of performance in order to finalize the closeout of the grant. The final report may be submitted in lieu of a final quarterly report with approval from the EPA Project Officer. 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.

G. Work Product and Report Submission Format

CONTRACTOR shall ensure that its work products and reports provided to CITY shall be submitted in an electronic format acceptable to EPA, unless otherwise approved by the EPA project officer. Current acceptable formats include Microsoft WORD, Microsoft EXCEL or Portable Document (PDF).

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement. - Not Applicable.

B. Eligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients[4] **-** Not Applicable.

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[2] CONTRACTOR shall provide the CITY complete, timely and accurate information, as requested, concerning the progress of its cleanup project to assist City in complying with Property Profile reporting obligations as provided by subsection III.E.

[3] CONTRACTOR shall provide the CITY complete, timely and accurate information, as requested, concerning the final outcome of its cleanup project to assist City in complying with Final Reporting obligations as provided by subsection III.F.

[4] CONTRACTOR is not authorized to use Agreement funds for any programmatic expenses without prior express written authorization by CITY.

C. Ineligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients

1. Cooperative agreement funds shall not be used by the CONTRACTOR 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 2 CFR Parts 200 and 1500.

2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this Agreement. Prohibited administrative costs include all indirect costs incurred by the CONTRACTOR under 2 CFR 200 Subpart E.

    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 Requirement for Cost Principles and Audit Requirements for Federal Awards at 2 CFR 200 and 1500. Direct costs for grant and subaward administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the BORROWER or SUBGRANTEE is required to carry out the activity under the Agreement.

    b. Ineligible grant or subaward administration costs include direct costs for:

        i. Preparation of applications for Brownfields grants and subawards;

        ii. Record retention required under 2 CFR Parts 200.333-337 and 1500.6;

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

iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308 and 2 CFR 1500.8;

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

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

vii. Non-federal audits required under 2 CFR 200 Subpart F; and

viii. Close out under 2 CFR 200.343.

ix. CONTRACTOR is subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. CONTRACTOR is prohibited from using Agreement funds for administrative costs.

c. Prohibited administrative costs for the CONTRACTOR (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 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 CONTRACTOR 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 or SUBGRANTEE'S administrative offices; and

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

iv. Costs incurred by the CONTRACTOR 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 CONTRACTOR for progress reporting to the CITY are eligible programmatic costs.

3. (This section number is missing in the EPA Cooperative Agreement.)

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.

D. Use of Program Income – Not Applicable

E. Post Cooperative Agreement Program Income – Not Applicable

F. Interest-Bearing Accounts - Not Applicable.

G. Leveraging - Not Applicable.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities – Not Applicable.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the BORROWER or SUBGRANTEE shall comply with 2 CFR 1500.11 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. Individual or generic Quality Assurance Project Plans (QAPPs) for activities within the scope of this agreement must be submitted for EPA approval prior to the collection of environmental samples. EPA may request assistance from a state program with the review and approval of QAPPs for non-state EPA CARs. For this to occur, the state

program must be authorized through an approved Quality Management Plan (QMP), to review and approve QAPPs in lieu of EPA. Review and approval of non-state EPA Brownfields CITY QAPPs by a state program will be limited to those instances where there is mutual agreement among the parties involved (the state, EPA, and the CITY), and the non-state EPA CITY agrees to participate in and follow the guidelines established within the State Response Program. Oversight of the state's QAPP approval process for Brownfields will be part of the Management Systems Review (MSR) process described in EPA Region 7's QMP. All QA documents will be prepared in accordance with current EPA requirements as defined in EPA Requirements for Quality Assurance Project Plans: EPA QA/R-5 (EPA/240/B-01/003, March 2001) and Guidance for Quality Assurance Project Plans: EPA QA/G-5(EPA/240/r-02/009, December 2002) or their subsequent revisions.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. Not Applicable.

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

   a. If any document, fact sheet, and/or web material are developed as part of this cooperative agreement, then they shall include the following statement: "Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of the EPA."

   b. If a sign is developed, as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at: http://www.epa.gov/ogd/tc.htm.

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

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

D. Administrative Record - Not Applicable.

E. Implementation of RLF Cleanup Activities

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

2. If the BORROWER or SUBGRANTEE is unable or unwilling to complete the RLF cleanup, the CITY shall ensure that the site is secure. The CITY 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
The CITY 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 – Not Applicable

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

1. The CITY shall ensure that BORROWER or SUBGRANTEE meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subawards:

a. – i., k. not applicable.

j. CONTRACTOR 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.

C. Default – Not Applicable.

D. Conflict of Interest – Not Applicable

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT – Not Applicable

2. <u>Davis Bacon Prevailing Wage Term and Condition For Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations</u>

The following terms and conditions specify how CITY will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA .financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, it may contact Lee A. Thomas at (913) 551-7739 or via email at Thomas.LeeA@epa.gov for guidance. The CITY may also obtain additional guidance from DOL's web site http://www.dol.gov/esa/whd/recovery/

1. Applicability of the Davis Bacon prevailing wage requirements.

For the purposes of this term and condition, EPA has determined that the all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. With regard to remediation of petroleum contamination, following consultation with the U.S. Department of Labor, EPA has determined that for remediation of petroleum contamination at brownfields sites, DB prevailing wage requirement apply when the project includes:

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

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

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

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other cleanup activities at brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if the CITY encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the CITY must discuss the situation with EPA before authorizing work on that site.

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

2. Obtaining Wage Determinations.

(a) The CITY is responsible for obtaining Davis-Bacon (“DB”) wage determinations from the Department of Labor (“DOL”) and ensuring the borrowers and subgrantees include the correct wage determinations in solicitations for competitive contracts by way

of requests for bids, proposals, quotes or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments).
(b) Unless otherwise instructed by EPA on a project specific basis, the CITY shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. The CITY must obtain wage determinations for specific localities at www.wdol.gov.

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

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

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

(iv) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the CITY shall use the "Building Construction" classification.

(v) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CITY shall use the "Heavy Construction" classification.

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

(c) The CITY shall comply with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The CITY must ensure that prime contracts entered into by the BORROWER contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the BORROWER's solicitation remains open, the CITY shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CITY shall require that the BORROWER 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 CITY may, on behalf of the BORROWER, request a finding from EPA that there is not reasonable time to notify interested contractors of the modification of the wage determination.

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

(iii) If the BORROWER carries out Brownfields cleanup activity subject to Davis-Bacon by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CITY shall ensure that the BORROWER inserts the appropriate DOL wage determination from www.dol.gov into the ordering instrument.

(d) The CITY 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.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a BORROWER’s contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the BORROWER 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 CITY will require that the BORROWER 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 BORROWER shall compensate the contractor for any increases in wages resulting from the use of DOL's revised wage determination. The CITY may, but is not required to, provide additional loan or subgrant funds to the BORROWER for this purpose.

3. Contract and Subcontract Provisions.

(a) The CITY shall ensure that BORROWER inserts 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 Davis-Bacon, 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 City 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)(l)(iv) of this section; also, regular contributions made or costs incurred far 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)(l)(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. The BORROWER shall require that the contractor and subcontractors include the name of the City employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CITY, on behalf of EPA, requires that contracts and subcontracts entered into by BORROWER shall provide that any class of laborers or mechanics, including helpers, which is not listed in the wage

determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve, upon the request of the CITY, an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, ***and the CITY and the BORROWER*** *do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the CITY will provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. The Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the CITY take appropriate action to implement the Administrator's determination.*

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

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

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

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section l(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)(l)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially

responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the BORROWER and to the City who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City 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 City.

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

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

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

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and trainees—

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

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration-shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training

program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

(a) Contract Work Hours and Safety Standards Act. The CITY shall ensure that BORROWER or SUBGRANTEE 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 CITY will upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the BORROWER, 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 City will 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 CITY 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 EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

Note: The CITY may require the BORROWER verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. The CITY must ensure that BORROWER understands the compliance verification requirements and can interpret prevailing wage determinations properly before placing the responsibility for compliance verification on BORROWER. Moreover, the CITY remains accountable to EPA for ensuring that the BORROWER's or SUBGRANTEE's contractors and subcontractors comply with DB.

(a) The CITY will periodically interview, or require that BORROWER 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 CITY will use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CITY will 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 CITY will 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. The CITY will 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. The CITY shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a BORROWER. All interviews shall be conducted in confidence.

(c). CITY shall conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The City shall establish and follow a spot check schedule based on an assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the

contract or subcontract. At a minimum, the CITY will 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. The CITY will 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 CITY shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The CITY 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) The CITY will immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at: *http://www.dol.gov/esa/contacts/whd/america2.htm*.

EXHIBIT F

APPROVED SUBGRANT BUDGET

Approved Response Plan Implementation and Related Necessary Activities (Approved Scope Tasks 1A & 1B)	$ 100,200.00
VCP Oversight Fees	$ 5,000.00
Security & Community Relations (Approved Scope Task 2)	
Security patrols	$ 5,000.00
Signage	$ 2,000.00
Advertise notice of public meetings	$ 1,000.00
Administrative Record duplication of documents	$ 500.00
Eligible Programmatic Expenses	
Procurement Advertise Solicitation	$ 1,500.00
TOTAL	$115,200.00
SUBGRANT AMOUNT	$ 96,000.00
COST SHARE AMOUNT	$ 19,200.00

EXHIBIT G

APPROVED SCOPE OF SUBGRANT ACTIVITIES

SUMMARY OF TASKS:

TASK 1 – APPROVED RESPONSE PLAN IMPLEMENTATION

TASK 1A. LBP Stabilization.

TASK 1B. ACM Tile Removal, Second Floor.

TASK 2. Security & Community Relations.

SCOPE OF SERVICES:

TASK 1A. LBP Stabilization.
Damaged, flaking and peeling LBP Surfaces in Basement, Second, Third and Fourth Floors will be stabilized in order to complete current abatement work prior to further renovation. Other LBP surfaces will be will be removed and replaced as components prior to renovation activities. All work is to be performed in accordance with applicable federal, state and local environmental laws and regulations, including BVCP policies and publications. An Operations & Maintenance (O&M) plan will be prepared for all remaining LBP surfaces in the structure.

TASK 1B. ACM Tile Removal
Approximately 60 square feet of floor tile and mastic containing ACM on the Second Floor will be removed prior to prior to renovations. Additional ACM material remains in the roof flashing. This material will either remain or be removed during renovations. All work is to be performed in accordance with applicable federal, state and local environmental laws and regulations, including BVCP policies and publications.

TASK 2. Security & Community Relations.
Security patrols will be performed as necessary to deter unauthorized entry and damage. Doors and windows will be secured as needed. A project sign acknowledging the participation of EPA brownfields funding and the City Revolving Loan Fund will be produced and installed in accordance with the EPA Cooperative Agreement. At least two public meetings will be held to inform stakeholders in the affected community of the remediation, in accordance with an approved Community Relations Plan. An Administrative Record will be established and maintained with copies of all relevant project documents.