

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

704



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
July 13, 2009

**SUBJECT:** Brownfields Clean Up Grant Award

**RECOMMENDED MOTION:** That the Board of Supervisors adopt Resolution No. 2009-251 authorizing the acceptance of a grant award from the Brownfields Clean Up Grant Program and execution of the Cooperative Agreement attached thereto.

**BACKGROUND:** The Brownfields Clean Up Grant Program ("Program") is being made available from U. S. Environmental Protection Agency ("EPA") under the American Recovery and Reinvestment Act ("ARRA") of 2009. An award of \$200,000 has been made to EDA for the cleanup of petroleum contaminants at property owned by the Redevelopment Agency at 25351 Trumble Road in the City of Menifee. EDA will use the funding to clean up the property and make it suitable for redevelopment.

(Continued)

Robert Field  
Assistant County Executive Officer/EDA

**FINANCIAL DATA**

Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	2009- 2010

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** N/A

<b>SOURCE OF FUNDS:</b> U. S. Environmental Protection Agency Brownfield Clean Up Funds	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL  
BY: Karim Watts-Bazan 7/13/09  
DATE Departmental Concurrence  
KARIN L. WATTS-BAZAN

Dept't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

NOV 12 11:25

Prev. Agn. Ref.:

District: 5

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.19

**BACKGROUND:**

The funding from EPA will be used to clean up the contaminants at the four acre site on the corner of Trumble Road and Highway 74. During the two year project time frame, EDA will carry out community involvement activities to encourage redevelopment of the site such that the future reuse of the property will create and retain jobs and does not pose a threat to human health and the environment. Although there is no match requirement, the total project cost is estimated at \$700,000 and the Redevelopment Agency will provide funds for remediation costs that exceed the \$200,000 grant amount.

Staff recommends that the Board adopt Resolution No. 2009-251 which authorizes the Assistant CEO/EDA, or his designee, to execute the Cooperative Agreement as well as any amendments thereto, and any other documents necessary to secure the grant funds from the EPA.

2 **RESOLUTION NO. 2009-251**

3 **ACCEPTANCE OF BROWNFIELDS GRANT AND COOPERATIVE AGREEMENT**

4 **WHEREAS**, the County of Riverside, a political subdivision of the State of California, has  
5 applied for and received an allocation of funds from The Brownfields Clean Up Grant Program  
6 from the U. S. Environmental Protection Agency (EPA) under the American Recovery and  
7 Reinvestment Act (ARRA); and

8 **WHEREAS**, The Brownfields Clean Up Grant Program funds provided are allocated  
9 thorough ARRA, which is a federal program; and

10 **WHEREAS**, the County of Riverside submitted to EPA an application to obtain an  
11 allocation of Brownfields Clean Up Grant Program funds in the amount of \$200,000 over two  
12 years with no matching funds requirement for the clean up of petroleum contaminants at 25351  
13 Trumble Road, Romoland; and

14 **WHEREAS**, the County of Riverside was approved for funding by EPA in the amount of  
15 \$200,000; and

16 **WHEREAS**, the EPA has developed a Cooperative Agreement which establishes the  
17 terms of approval for the Brownfields Clean Up Grant Program funds and must be executed by  
18 the County in order to secure said funds; and

19 **WHEREAS**, the Cooperative Agreement is attached hereto and incorporated herein by  
20 this reference as Exhibit A; and

21 **WHEREAS**, the Cooperative Agreement requires the Brownfields Clean Up Grant  
22 Program funds received to be used for the cleanup at the Trumble Road site; and

23 **WHEREAS**, the Board of Supervisors has established County Policy A-30 which  
24 requires the managing department head to bring any awards or contracts resulting from a grant  
25 application to the Board of Supervisors for approval.


26 **NOW, THEREFORE BE IT RESOLVED** on July 21, 2009, that the Board of Supervisors  
27 of the County of Riverside hereby authorizes the Assistant CEO/EDA, or designee, to execute  
28 the Cooperative Agreement as well as any amendments thereto, and any other documents  
necessary to secure the grant of funds from the EPA.

24 \\\

25 \\\

FORM APPROVED BY COUNTY COUNSEL  
BY: *Karin L. Watts* 7/13/09  
DATE: KARIN L. WATTS-BAZAN

# RETURN TO EPA, MTS-7

 <p><b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b></p> <p><b>Cooperative Agreement</b></p>	<b>ASSISTANCE ID NO.</b>			<b>DATE OF AWARD</b> 06/26/2009
	<b>PRG</b> 2B	<b>DOC ID</b> 00T15701	<b>AMEND#</b> - 0	
	<b>TYPE OF ACTION</b> New			<b>MAILING DATE</b> 06/29/2009
	<b>PAYMENT METHOD:</b> ACH			<b>ACH#</b> pend
<b>RECIPIENT TYPE:</b> County		<b>Send Payment Request to:</b> Las Vegas Finance Center, Fax (702) 798-2423		
<b>RECIPIENT:</b> County of Riverside Econ Dev Agcy P. O. Box 1180 Riverside, CA 92502 EIN: 95-6000930		<b>PAYEE:</b> County of Riverside Economic Dev Agcy P. O. Box 1180 Riverside, CA 92502		
<b>PROJECT MANAGER</b> Pamela Hogan P. O. Box 1180 Riverside, CA 92502 E-Mail: pkhogan@rivcoeda.org Phone: 951-955-2065		<b>EPA PROJECT OFFICER</b> Deirdre Nurre 75 Hawthorne Street, WST-5 San Francisco, CA 94105 E-Mail: Nurre.Deirdre@epamail.epa.gov Phone: 415-947-4290		<b>EPA GRANT SPECIALIST</b> Susan Chiu Grants Management Office, MTS-7 E-Mail: Chiu.Susan@epa.gov Phone: 415-972-3674
<b>PROJECT TITLE AND DESCRIPTION</b> ARRA Brownfields Cleanup Cooperative Agreement				
<p>This award provides stimulus funding to Riverside County Economic Development Agency for clean up of petroleum contaminants at the 2535 site in Menifee, CA. During the life of the project, the County will carry out community involvement activities to encourage redevelopment of the the future reuse of the property will create and retain jobs and does not pose a threat to human health and the environment.</p> <p>This action provides full federal funding in the amount of \$200,000.</p>				
<b>BUDGET PERIOD</b> 08/01/2009 - 06/01/2011		<b>PROJECT PERIOD</b> 08/01/2009 - 06/01/2011		<b>TOTAL BUDGET PERIOD COST</b> \$200,000.00
				<b>TOTAL PROJECT PEI</b> \$200,000.00
<b>NOTICE OF AWARD</b>				
<p>Based on your application dated 06/02/2009, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$200,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not excee total federal funding of \$200,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the awa by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days a receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>				
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Management Office, MTS-7 75 Hawthorne Street San Francisco, CA 94105			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Superfund Division, SFD-1 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>				
<b>SIGNATURE OF AWARD OFFICIAL</b> Digital signature applied by EPA Award Official		<b>TYPED NAME AND TITLE</b> Carolyn Truong, Grants Management Officer		<b>DATE</b> 06/26/2009
<b>AFFIRMATION OF AWARD</b>				
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>				
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b> Tina English, Deputy Executive Director		<b>DATE</b>

FORM APPROVED COUNTY COUNSEL  
 BY: Karin L. Watts-Bazan 7/13/09  
 KARIN L. WATTS-BAZAN DATE

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 200,000	\$ 200,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 200,000	\$ 200,000

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

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	0909K9B019	0910	E4S	09K2	402D79EBP	4114	G980ST00		200,00
									200,00

Budget Summary Page

	Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel		\$25,000
2. Fringe Benefits		\$0
3. Travel		\$2,000
4. Equipment		\$0
5. Supplies		\$1,000
6. Contractual		\$172,000
7. Construction		\$0
8. Other		\$0
9. Total Direct Charges		\$200,000
10. Indirect Costs: % Base		\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)		\$200,000
12. Total Approved Assistance Amount		\$200,000
13. Program Income		\$0
14. Total EPA Amount Awarded This Action		\$200,000
15. Total EPA Amount Awarded To Date		\$200,000

## **Administrative Conditions**

**Administrative conditions numbered 1 through 30 apply. Refer also to ATTACHMENT A for applicable programmatic conditions.**

### **1. ADVANCE METHOD OF PAYMENT**

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

### **2. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS**

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

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

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

### **3. ELECTRONIC TRANSFER OF FUNDS**

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

#### **A) Automated Standard Application for Payments (ASAP)**

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

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

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

#### **B) Electronic Funds Transfer (EFT)**

Under this payment mechanism, the recipient submits an EPA Payment Request Form to EPA for approval. Approved funds are credited to the recipient organization at its designated financial institution. In order to receive EFT payments the recipient must first complete and return the *ACH Vendor/Miscellaneous Payment Enrollment* form (TFS Form 3881) to the EPA Las Vegas Finance Center. The Enrollment form can be found by visiting

<http://www.epa.gov/ocfo/finservices/payinfo.htm#grants>. Upon receipt and processing of the enrollment form, the LVFC will send you a letter assigning you an EFT Control Number. At that time you will also receive an EFT payment process Recipient's manual along with a supply of EPA Payment Requests and other required forms. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485.

#### **4. FINANCIAL STATUS REPORTS/GRANT CLOSEOUT**

##### **A) Interim Financial Status Reports (FSR)**

An Interim Financial Status Report (FSR-SF269) is to be submitted to the appropriate EPA Grants Management Office 90 days after the anniversary of the project period start date. Interim FSRs should be submitted to: Grants Management Office (MTS-7), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

##### **B) Final Financial Status Reports**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Financial Status Report – also called the SF269 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Assistance agreement recipients must also send Federal Cash Transaction Reports (SF-272) annually to the LVFC; the SF-272 is due 15 working days after December 31. Please note that these reports are required by EPA grant regulations (see 40 Code of Federal Regulations §31.41(c)). Completed SF269s and SF272s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report.

##### **C) Closeout**

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

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

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

#### **5. HOTEL-MOTEL FIRE SAFETY**

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

#### **6. LOBBYING AND LITIGATION**

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

## **RESTRICTIONS ON LOBBYING**

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

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

## **7. MANAGEMENT FEES**

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

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

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

## **9. RECYCLING AND WASTE PREVENTION**

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

## **STATE AGENCIES AND POLITICAL SUBDIVISIONS**

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

## **10. REIMBURSEMENT LIMITATION**

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

approved budget.

## 11. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. **For fiscal periods 2002 to 2007 recipients are to submit hard copy to the following address:**

Federal Audit Clearinghouse  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

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

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

- (a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)(Recovery Act) as required by Congress and in accordance with 2 CFR 215, subpart \_\_. 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.
- (b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
- (c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.
- (d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## 12. SUBAWARD POLICY

- a. The recipient agrees to:
- (1) Establish all subaward agreements in writing;
  - (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);

- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
  - (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
  - (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
  - (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
  - (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
  - (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

### 13. SUSPENSION AND DEBARMENT

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

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

### 14. TRAFFICKING VICTIM PROTECTION ACT OF 2000

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

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

section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

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

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

## **15. INDIRECT COSTS**

The cost principles of 2 CFR 225, 230, or 220 (OMB Circular A-87, A-122, or A-21) are applicable to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

## **16. REQUIRED CERTIFICATIONS FOR INFRASTRUCTURE INVESTMENTS**

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

## **17. SECTION 1512 REPORTING AND REGISTRATION REQUIREMENTS**

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

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The initial report is due by October 10, 2009. Thereafter, the reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number ([www.dnb.com](http://www.dnb.com)) is one of the requirements for registration in the Central Contractor Registration.
- (d) The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov) and ensure that any information that is pre-filled is corrected or updated as needed.

## **18. INSPECTOR GENERAL REVIEWS**

In addition to the access to records provisions of 2 CFR 215.53 or 40 CFR 31.42, and in accordance with the provisions of section 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA),

recipient agrees to allow any appropriate representative of the Office of Inspector General to (1) examine any records of the recipient, any of its procurement contractors and subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the procurement contract, subcontract, grant or subgrant; and (2) interview any officer or employee of the recipient, subcontractor, grantee, subgrantee, or agency regarding such transactions.

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

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

## **19. PROTECTION OF WHISTLEBLOWERS**

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

## **20. FALSE CLAIM**

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

## **21. PREFERENCE FOR QUICK-START ACTIVITIES**

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

## **22. LIMIT ON FUNDS**

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

## **23. BUY AMERICAN**

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

**Brownfields – Hazardous Substances.** This term and condition applies to projects involving the construction of caps to contain contamination that are directly incorporated into a public building or public work as defined in 2 CFR 176.140(a) or construction of a water system to provide alternative drinking water at a site when conducted by a governmental entity specified at 2 CFR 176.140(a) under a direct EPA grant or a subgrant or loan financed by a Brownfield Revolving Loan Fund capitalization grant. It does not apply to direct grants, RLF loans and subgrants to private sector borrowers, non profit organizations and other non-governmental recipients, borrowers or subgrantees or tribes unless the remediation takes place on a public building or public work defined at 2 CFR 176.140(a). However, if a recipient encounters a unique situation at a site that presents uncertainties regarding Buy American applicability, the recipient must discuss the situation with EPA's project officer before authorizing work on that site.

**Brownfields – Petroleum.** This term and condition applies only when a governmental recipient specified at 2 CFR 176.140(a) uses cooperative agreement funds to install drinking water pipes, constructs wells to remediate contamination of drinking water, or reconstructs a concrete or asphalt pad or similar structure following removal of an underground storage tank under a direct EPA grant or a subgrant or loan financed by a Brownfield Revolving Loan Fund capitalization grant. It does not apply to direct grants, RLF loans and subgrants to private sector borrowers, non profit organizations and other non-governmental recipients, borrowers or subgrantees or tribes unless the remediation takes place on a public building or public work defined at 2 CFR 176.140(a). However, the recipient must contact EPA's Award Official for additional guidance if it encounters unique situations that presents uncertainties regarding Buy American applicability, the may involve construction, alteration, maintenance or repair of a public building or public work as defined at 2 CFR 176.140(a).

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

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

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

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

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

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

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

(b) *Domestic preference* .

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

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

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

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

project by more than 25 percent;

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

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

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

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

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

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

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

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

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of Measure	Quantity	Cost (Dollars)*
<b>Item 1:</b>			
Foreign steel, iron, or manufactured good	_____	_____	
Domestic steel, iron, or	_____	_____	

manufactured good			
<b>Item 2:</b>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed.

Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

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

**Brownfields – Hazardous Substances.** This term and condition applies to projects involving the construction of caps to contain contamination that are directly incorporated into a public building or public work as defined in 2 CFR 176.140(a) or construction of a water system to provide alternative drinking water at a site when conducted by a governmental entity specified at 2 CFR 176.140(a) under a direct EPA grant or a subgrant or loan financed by a Brownfield Revolving Loan Fund capitalization grant. It does not apply to direct grants, RLF loans and subgrants to private sector borrowers, non profit organizations and other non-governmental recipients, borrowers or subgrantees or tribes unless the remediation takes place on a public building or public work defined at 2 CFR 176.140(a). However, if a recipient encounters a unique situation at a site that presents uncertainties regarding Buy American applicability, the recipient must discuss the situation with EPA's project officer before authorizing work on that site.

**Brownfields -- Petroleum.** This term and condition applies only when a governmental recipient specified at 2 CFR 176.140(a) uses cooperative agreement funds to install drinking water pipes, constructs wells to remediate contamination of drinking water, or reconstructs a concrete or asphalt pad or similar structure following removal of an underground storage tank under a direct EPA grant or a subgrant or loan financed by a Brownfield Revolving Loan Fund capitalization grant. It does not apply to direct grants, RLF loans and subgrants to private sector borrowers, non profit organizations and other non-governmental recipients, borrowers or subgrantees or tribes unless the remediation takes place on a public building or public work defined at 2 CFR 176.140(a). However, the recipient must contact EPA's Award Official for additional guidance if it encounters unique situations that presents uncertainties regarding Buy American applicability, the may involve construction, alteration, maintenance or repair of a public building or public work as defined at 2 CFR 176.140(a).

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

(a) **Definitions.** As used in this award term and condition—  
“Designated country” --

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

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

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country:  
Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

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

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

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

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

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

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

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

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

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

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

(1) This award term and condition implements

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

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

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

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

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

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

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

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.

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

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

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

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

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

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

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

Description	Unit of	Quantity	Cost (Dollars)*
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	Measure		
<b>Item 1:</b>			
Foreign steel, iron, or manufactured good	_____	_____	
Domestic steel, iron, or manufactured good	_____	_____	
<b>Item 2:</b>			
Foreign steel, iron, or manufactured good	_____	_____	
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed.

Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

#### 24. PAYMENT TO CONSULTANTS

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

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

#### 25. OMB GUIDANCE

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

#### 26. ADDITIONAL FUNDING DISTRIBUTION AND ASSURANCE OF APPROPRIATE USE OF FUNDS

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

#### 27. MBE/WBE FAIR SHARE GOALS (DBE RULE)

The recipient agrees to comply with the requirements of the Small Business Program EPA Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements as set forth in 40 CFR Part 33. The EPA DBE rule can be accessed at <http://www.epa.gov/osbp>. In addition, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply with 40 CFR Section 33.301. Records documenting compliance with the six good faith efforts shall be retained.

The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the California State Water Resources Control Board (CA SWRCB) as follows:

	MBE	WBE
Construction	24%	06%
Equipment	22%	26%
Services	30%	31%
Supplies	29%	20%

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

Pursuant to 40 CFR Section 33.404, the recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study to Joe Ochab, MTS-1, the Regional MBE/WBE Coordinator, within 120 days of acceptance of the financial assistance award. EPA will respond to the proposed fair share objectives/goals within 30 days of receiving the submission. If proposed fair share objectives/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objectives/goals are submitted.

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

## 28. MBE/WBE REPORTING

The recipient agrees to complete and submit to the Grants Management Office, MTS-7, a MBE/WBE Utilization Report (EPA Form 5700-20A), within 30 days after the end of the Federal fiscal year; i.e., by October 30 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards a recipient's MBE/WBE accomplishments. A final MBE/WBE report must be submitted within 90 days after the end of the project period. Your grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

## 29. ARRA LOGO

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

### **30. CIVIL RIGHTS LAWS**

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

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

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

### **Programmatic Conditions**

Refer to **ATTACHMENT A** for applicable programmatic RECOVERY ACT Brownfields Cleanup terms and conditions.

**END OF DOCUMENT**

# ATTACHMENT A

( Total Pages = 23 )

County of Riverside Economic Development Agency  
Grant #2B-00T15701-0 (Petroleum)

## Recovery Act Cleanup Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to RECOVERY ACT Brownfields Cleanup Grants awarded under CERCLA 104(k).

### I. GENERAL FEDERAL REQUIREMENTS

**Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients.**

#### A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal the Cooperative Agreement Recipient submitted in the Fiscal Year 2009 competition for Brownfields cleanup cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.
- b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
- c. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and the environment.
- d. Optional T&C for CAR recipients that choose to participate in State or Tribal response programs that do not have a promulgated program.** If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the EPA to ensure protectiveness of human health and the environment.
- e. A term and condition or other legally binding provision shall be included in all

agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include:

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

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

h. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon please see the Davis- Bacon Addendum to these T&Cs under Section VII.

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

## **B. Changes to Sites and Cleanup Methods**

1. a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved work plan. Any changes to the boundaries of the site must be approved by EPA in a revised work plan.
- b. The CAR may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

## **II. GENERAL COOPERATIVE AGREEMENT**

## ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 1 year from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement for material non-compliance with its terms. The CAR should note that in order to ensure adequate review time, the review of sufficient progress could begin as early as June 30, 2010 and the CAR must report on sufficient progress no later than August 30, 2010. For purposes of the Recovery Act Cleanup Grants, "sufficient progress in implementing a cooperative agreement" means that an appropriate remediation plan is in place, institutional control development, if necessary, has commenced, initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed and a solicitation for remediation services has been issued.

### B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement may include reviewing financial and program performance reports; and monitoring all reporting, record-keeping, and other program requirements.
  - c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR remains responsible for ensuring costs are allowable under

applicable OMB Circulars.

### C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

### D. Recovery Act Quarterly Progress Reports

1. The CAR must report in three different areas on Recovery Act funds.
  - a. First, the CAR (**and any sub-recipients such as contractors**) must report in [www.FederalReporting.Gov](http://www.FederalReporting.Gov) within ten calendar days after the end of each calendar quarter (Recovery Act Section 1512 reporting requirements). The first report is due on October 10, 2009. FederalReporting.Gov is a Government-wide system, managed by OMB, which will collect information on the use of Recovery Act funds from all Recovery Act fund recipients **and** their sub-recipients. For more information on the requirements for FederalReporting.gov please see Brownfields Administrative Term & Condition #17.
  - b. Second, the CAR must report on interim progress and any final accomplishments by completing and submitting relevant portions of the Property Profile Form (e.g., the initiation of cleanup activities, the completion of cleanup activities, institutional controls, contaminants, and reuse). The CAR must submit the updated Property Profile Form reflecting such events as soon as the accomplishment has occurred, or within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR will be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>.

involvement pertaining to the cleanup activities.

2. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfields program development and implementation (including monitoring of health and institutional controls) as described in the EPA-approved work plan. The CAR must maintain records on funds that will be used to carry out the EPA-approved work plan to ensure that no more than 10% of its funds are used for brownfields program development and implementation (including monitoring of health and institutional controls).

**B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. To fund particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - b. Pre-cleanup environmental assessment activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
  - c. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
  - d. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility or addressing public or private drinking water supplies that have deteriorated through ordinary use);
  - e. Job training unrelated to performing a specific cleanup at a site covered by the grant;
  - f. To pay for a penalty or fine;
  - g. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - h. To pay for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107;
  - i. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
  - j. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
- b. Ineligible grant administration costs include direct costs for:
- (1) Preparation of applications for Brownfields grants;
  - (2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
  - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
  - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
  - (5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
  - (6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
  - (7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
  - (8) Close out under 40 CFR 30.71 and 40 CFR 31.50.
- c. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

### **C. Grant Recipient Eligibility**

1. The CAR may only clean up sites *it solely owns*. The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement.

### **D. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA §107**

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain continuing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA 104(k)(7)(C). These continuing obligations include:

- (1) 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;

- (2) taking reasonable steps with respect to hazardous substance releases;

- (3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and

- (4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r).

## **IV. CLEANUP ENVIRONMENTAL REQUIREMENTS**

### **A. Authorized Cleanup Activities**

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered;

and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

2. For cleanup of petroleum sites identified in the EPA-approved work plan, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The cleanup method chosen must be based on this analysis.
3. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

#### **B. Quality Assurance (QA) Requirements**

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
2. The CAR shall comply with the following QA requirements:
  - a. This grant includes the performance of environmental measurements, therefore, a QA plan, a Sampling and Analysis Plan, or other comparable document covering QA activities must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient shall consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation will be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, the recipient's Quality Assurance Officer, and the Oversight Authority (i.e. the State Project Manager if the project is enrolled in the State Oversight Program) before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e. sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.
  - b. Under Assessment, Cleanup and Revolving Loan Fund (RLF) grants, a one-site

project may use the one-site Region 9 Sampling and Analysis Plan which incorporates the Quality Assurance Project Plan (QAPP).

**C. Community Relations and Public Involvement in Cleanup Activities**

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

**D. Administrative Record**

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

**E. Implementation of Cleanup Activities**

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. Subject to any required approvals by the regulatory oversight authority, the CAR is allowed to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the CAR is unable or unwilling to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

**F. Completion of Cleanup Activities**

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

**V. OTHER RECOVERY ACT CLEANUP GRANT REQUIREMENTS**

**A. Inclusion of Special Terms and Conditions in Cleanup Documents**

1. The CAR shall meet the cleanup and other program requirements of the cleanup including:
  - a. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with cleanup grant funds. Cooperative agreement recipients shall provide access to records relating to cleanups supported with cleanup grant

funds to authorized representatives of the Federal government.

- b. The CAR has an ongoing obligation to advise EPA if assessed any penalties resulting from environmental non-compliance at the site subject to this agreement.

## **B. Conflict of Interest**

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

- (i) The affected party,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above,
- has a financial or other interest in the subgrant recipient.

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

## **VI. PAYMENT AND CLOSEOUT**

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

### **A. Payment**

1. To receive funds for this Brownfields Cooperative Agreement, the CAR must establish an account with EPA and submit Financial Status Reports (FSRs) after allocable and allowable costs are accrued. To establish an account, or for more information on the payment process and requirements, the CAR may contact Anna Woods, EPA Region 9 Financial Specialist, at (702) 798-2496 or visit <http://www.epa.gov/ocfo/finservices/payinfo.html>. To determine what is an

allocable or allowable cost for this grant, contact your Region 9 Brownfields Project Officer.

## **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA-approved work plan.

## **VII. DAVIS-BACON REQUIREMENTS (PETROLEUM)**

### **Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009**

#### **Preamble**

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

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

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

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

EPA is subject to the Department of Labor's (DOL) DB regulations at 29 CFR Part 1 and 29 CFR 5.5 which are hereby incorporated by reference. The following terms and conditions implement the Agency's DB responsibilities under these regulations 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 the EPA Project Officer or Grants Specialist for guidance. The Recipient may also obtain additional guidance from DOL's web site at

## **1. Applicability of the Davis Bacon prevailing wage requirements.**

After consultation with DOL, EPA has determined that for Brownfields grants for cleanups of sites contaminated with petroleum, DB prevailing wage requirements apply when the project includes:

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

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

## **2. Obtaining Wage Determinations.**

- (a) Unless otherwise instructed by EPA on a project specific basis, the Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Recipients must obtain wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov).
  - (i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement, the Recipients shall use the "Heavy Construction" Classification.
  - (ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Building Construction"

classification.

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

If, based on discussions with a Recipient, EPA determines that DB applies to a unique situation (e.g. unusually extensive excavation) the Agency will advise the Recipient which General Wage Classification to use based on the nature of the construction activity at the site.

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

(i) While the solicitation remains open, the Recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipient 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 Recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the Recipient.

(ii) If the Recipient 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 Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the Recipient carries out petroleum cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(d) Recipients 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 Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient 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 Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract Provisions.**

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

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients shall require that the contractor and subcontractors include the name of the Recipient employee or official responsible for monitoring compliance with DB on the poster.

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

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

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

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

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

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

(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

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, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan

approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, 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

contract or subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

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

# Exhibit A

	<p style="text-align: center;">SOUTH ELEVATION</p> <p style="text-align: center;">1</p>
	<p style="text-align: center;">WEST ELEVATION</p> <p style="text-align: center;">2</p>
	<p style="text-align: center;">NORTH ELEVATION</p> <p style="text-align: center;">3</p>
	<p style="text-align: center;">EAST ELEVATIONS</p> <p style="text-align: center;">4</p>
<p>KEYNOTES</p>	
<p>VOLUNTEERS IN MEDICINE CLINIC STREET ADDRESS CITY, STATE ZIP CODE EXTERIOR ELEVATIONS</p> <p>DATE: JUNE 30, 2024 REVISIONS</p> <p>ARCHITECT: [Logo] [Logo]</p> <p>A3.1</p>	

KEYNOTES

**VOLUNTEERS IN MEDICINE CLINIC**  
 RIVERSIDE COUNTY  
 STREET ADDRESS  
 CITY, STATE ZIP CODE

**SITE PLAN**

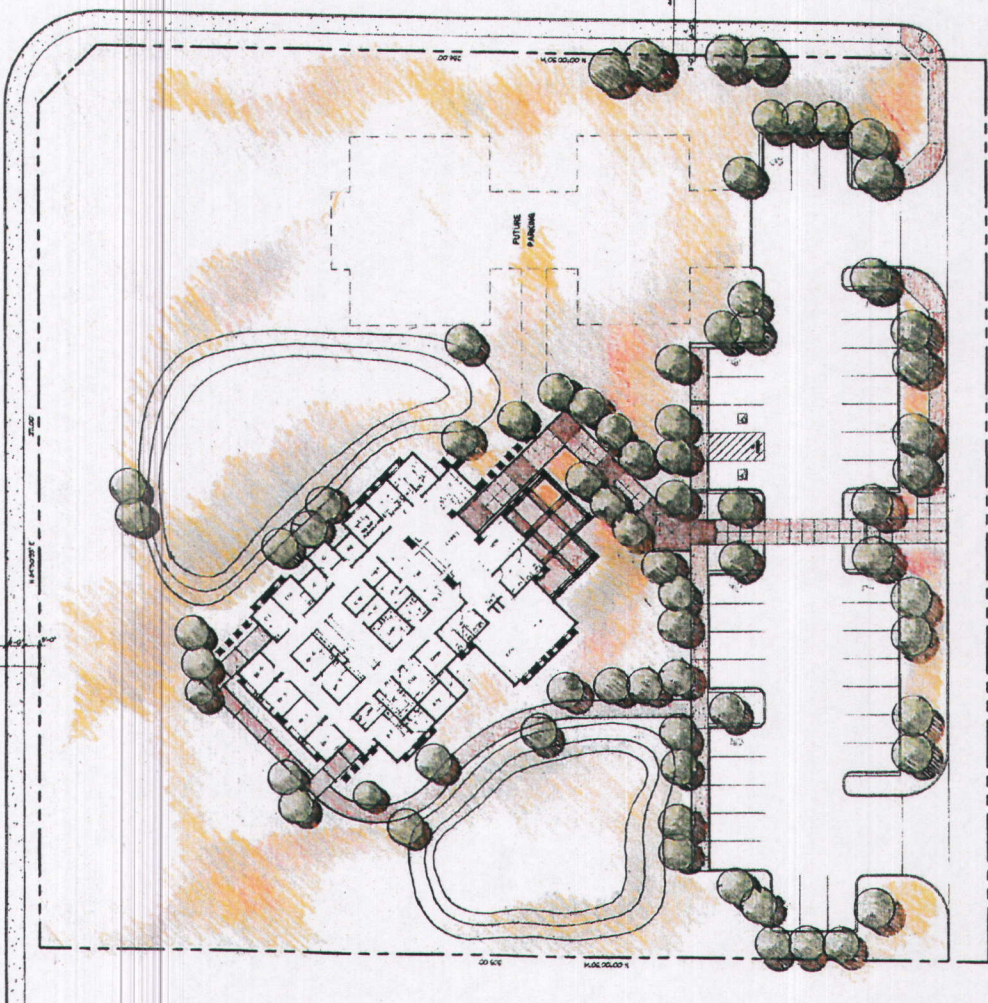
DATE: 01/11/07  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

PROJECT: [Name]  
 LINE NO: 2004  
 REVISIONS

**A1.1**

DR. CARREON BLVD.  
N 1475035 E

VAN BUREN STREET  
N 0070030 W

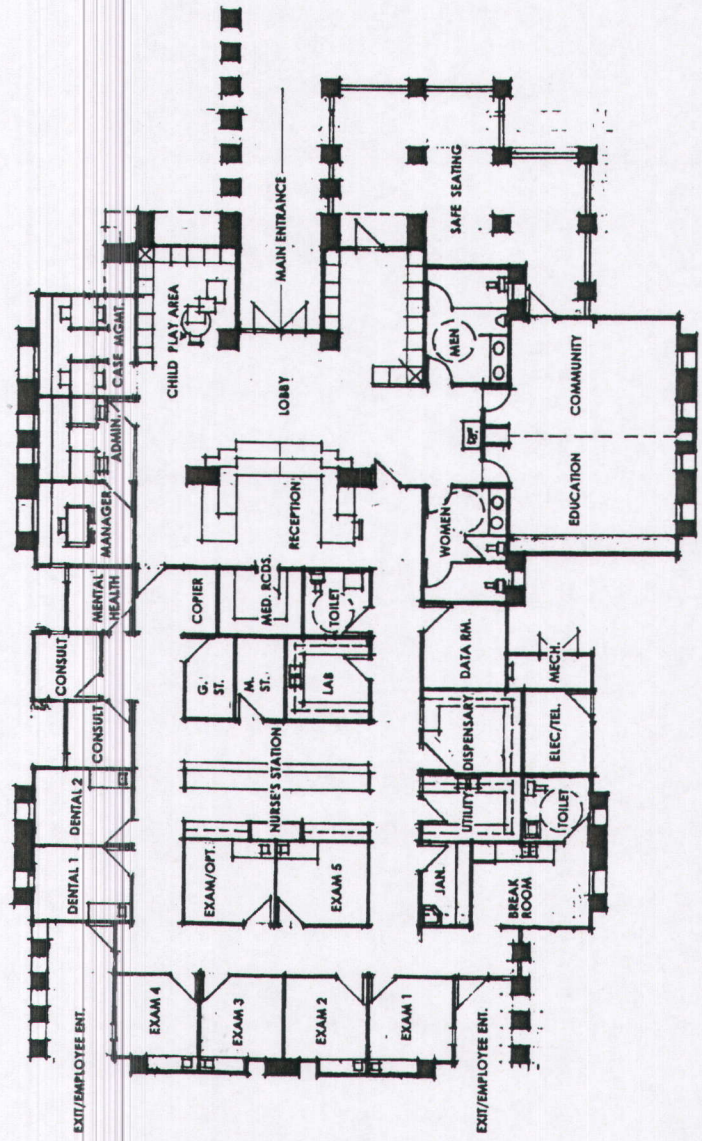


SITE PLAN

1/11/07

Volunteers in Medicine Properties/Research - 1475035 (03) Volunteers in Medicine Clinic (06/01) 03 A1.1 08/04/07 5:32pm

Exhibit A



VIM CLINIC - INDIO, CA.