

# TECHNICAL BID SPECIFICATIONS

## Demolition of Dixon Building



**Dixon Building**  
**116 Knox Street**  
**Barbourville, Kentucky**



**Prepared by:**



**Linebach & Funkhouser, Inc.**  
ENVIRONMENTAL COMPLIANCE & CONSULTING

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## **1.0 Introduction**

The subject site is a 3-story, vacant brick building currently known as the Dixon Building, located at 116 Knox Street in downtown Barbourville, Kentucky, in a dense commercial area. The building was constructed around 1900 and originally known as the Parker Building. It has been used for several purposes through the years, including as offices, a bank and a clothing store. The site has been dormant for several years, and is in a deteriorating condition of compromised structural integrity. The structure experienced a partial collapse in June of 2021.

Based on the structure's age, asbestos-containing materials (ACMs) and lead-based paints are presumed present on all floors of the building. Due to the unstable and partially collapsed structure, comprehensive ACM surveys of the building have been deemed unsafe.

Redevelopment of the building for any cost-effective, practical re-use will require removal of the ACM. However, due to the unstable nature of at least portions of the deteriorating building, based on a structural engineering study found in Appendix C following the June 2021 partial collapse, emergency stabilization of the building is necessary and associated safety concerns would be presented to personnel inside the structure attempting to survey, sample, and properly remove ACM with the building remaining intact. Additionally, the likely imminent collapse of other portions of the building's outer walls in the event of an intact cleanup of ACM from the building could also dangerously affect adjoining properties, some of which are occupied structures.

Consequently, due to the safety and collateral damage concerns to human health and environment associated with intact removal/mitigation of the ACM within the old Dixon Building, ACM remediation of the site will be a "wet" removal effort involving demolition of the building with measures taken to control potential airborne emission of friable ACM through use of a water spray. Once on the ground surface, the ACM and rubble will be loaded onto trucks for proper transport and disposal at an approved landfill permitted for receipt of the material.

## **2.0 Site and Project Description**

The property is located at the southwest corner of Knox Street and Liberty Street, one block east of the downtown Court Square. Occupied buildings adjoin the Dixon Building on the west (right) and south (rear) sides. The north (front) side is open to Knox Street and the east (left) side is open to Liberty Street. The June 2021 partial collapse occurred near the southeast corner, along Liberty Street, which has been closed and access restricted since the collapse.

Based on the referenced structural engineering study in Appendix C, the existing structure appears to be rather consistent with three bays spanning approximately 16'-0" left to right with two beam lines spanning front to rear. The floors appear to consist of 2x12"s @ 12" on-center and the roof appears to consist of 2x10"s @ 18" on-center.

The structure is to be demolished and building materials properly disposed of off-site or recycled off-site in accordance with all federal, state, and local laws.

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**Work Site Address:** Dixon Building  
116 Knox Street  
Barbourville, Kentucky 40906

**Latitude/Longitude:** 36.866551°/-83.887825°

Utility services at the subject property and surrounding area include:

Electricity	Barbourville Utilities	606-546-3187
Natural Gas	Delta Natural Gas	606-248-1845
Potable Water	Barbourville Utilities	606-546-3187
Sanitary Sewer	Barbourville Utilities	606-546-3187
Septic System	None	--

### 3.0 Work Description

Work will consist of the abatement of hazardous building materials including ACM and LBP. Window replacement will be completed by another contractor semi-concurrently.

All work shall be done in accordance with all federal, state, and local laws and notification and licensing requirements (see Section 6.0 for specific details regarding asbestos abatement).

Abatement of hazardous building materials and the disposal of all hazardous wastes will be completed in one mobilization, and all materials from the building will be removed and disposed of properly off-site or, where feasible and allowable, recycled, as described in the Contractor's Work Plan, after having been approved by the Owner and Owner's site representative. The Owner, for purposes of this demolition project, is the City of Barbourville and the Owner's site representative is Linebach Funkhouser, Inc.

The Contractor is to become familiar with the site at the required site walk/pre-bid meeting **September 8, 2025, at 11:00 AM** as to the extent of hazardous building materials and conditions present. A description prepared by the Contractor and included in the Contractor's Work Plan will be required as to how compliance will be achieved with U.S. Occupational Safety & Health Administration (OSHA) and Kentucky Labor Cabinet, Department of Workplace Standards, statutes and regulations, including health and safety policies and procedures specific to this project.

## 4.0 General Provisions

1. **Mobilization:** The Contractor shall be responsible for mobilizing all equipment, materials, supplies, and personnel to the site. All Contractor's (and subcontractor's) equipment mobilized to the site shall be thoroughly cleaned prior to mobilization. Equipment that is not visibly clean upon site mobilization shall be taken off site and cleaned by the Contractor (or their subcontractor) prior to remobilization at no additional cost to the City.
2. **Compliance:** All work performed under these specifications must adhere to all laws, statutes, ordinances, codes, regulations, and requirements of all inspection and regulatory agencies and the work performed according to these requirements. If the specifications do not set forth all such requirements, this does not relieve the Contractor of the responsibility to adhere to all requirements necessary for completing the contract in accordance with all applicable laws, statutes, ordinances, codes, regulations, and requirements. If differing site conditions are found during the execution of work, they shall be immediately brought to the attention of the City or City's site representative for review and direction. The Contractor is responsible for any fees associated with obtaining permits or other compliance-related items.

The Contractor must attest in its proposal that: (1) Davis-Bacon Act requirements will be met, (2) the Contractor or any of its sub-Contractors are not currently debarred from conducting work for the U.S. government, and (3) the Contractor or its sub-Contractors have no outstanding OSHA violations. If sub-Contractors are contemplated, then the Contractor should consider using Disadvantaged Business Enterprises, Minority Business Enterprises, and/or Women's Business Enterprises, if appropriate.

The Contractor shall hold the City and City's site representative harmless for failure to comply with any applicable work, abatement, transport and disposal, environmental, health, safety, or other regulation on the part of himself/herself, his/her employees, or his/her sub-contractors.

All references to codes and standards within this specification are made for informational purposes only. They are not intended nor shall they be interpreted as being all-inclusive. The City or City's representative shall not be liable for the Contractor's negligence in compliance with any applicable code, law, or regulation not cited in this specification. In cases of conflict between this specification and any applicable code, law, and/or regulation, the stricter wording shall apply and shall be enforced. Except to the extent that more explicit or more stringent requirements are written directly into the contract documents, all applicable codes, regulations, and standards have the same force and effect as if copied directly into the contract documents, or as if published copies are bound herewith.

3. **Contractor's Site Inspection:** It shall be the responsibility of the Contractor to inspect the site prior to submitting a bid to determine pertinent factors such as access, zoning, easements, scope of work, condition of improvements, etc. The submission of a bid will

be construed as evidence that inspections and investigations have been made. Later claims for such items which could have been foreseen had inspections/investigation been made shall not be recognized. The Contractor's supervisory personnel will conduct a site safety audit prior to full mobilization, including review and inspection of staging areas, items to be deconstructed and salvaged, environmental controls for wastewater and stormwater drainage, decontamination, waste handling and storage, and dust control.

4. **Public Protection:** The Contractor shall provide for adequate protection to safeguard the public at all times. The Contractor shall employ watchmen when necessary, and shall furnish and maintain barricades, fencing, and other devices considered necessary for the protection of the public and for site security.
5. **Street or Roadway Obstruction:** If a street is to be closed or obstructed (in addition to the current Liberty Street closure), a permit shall be secured by the Contractor from the proper authority. The Fire Department, Police Department, and utility companies involved shall be given notice, as appropriate, by the Contractor of the time when such street or road is to be closed or obstructed. The Dixon Building is adjacent to Knox Street on the north and Liberty Street on the east and precautions must be taken to keep pedestrians out of the work zone and to prevent damage to the street.
6. **Protection of Adjacent Properties:** The Contractor shall use every precaution to prevent damage to adjacent property and buildings. The Contractor shall take all precautions, including erection of temporary barriers to prevent any damage to adjacent buildings and the surrounding site from demolition procedures and material splatter. The Contractor shall take all precaution to prevent damage to the roofs of the adjoining property owners, including the roofs that have attachments into the Dixon building. The Contractor shall repair and replace any damage to such adjoining buildings as required. All equipment, tools, and materials permitted to remain on site during the operations shall be neatly stored in such a manner as will not interfere with the rights and privileges of the adjacent property owners.

The Contractor shall verify that the masonry walls of the adjacent properties are structurally independent and the adjacent walls of the Dixon Building may be removed.

After demolition of the Dixon Building, the Contractor shall seal the two walls of the adjacent buildings that will be exposed by applying a 2-coat cementitious stucco. The first coat will be 3/8" and the second coat 1/8" thick. Standards for the installation will be found in *ASTM C926-11a Standard Specification for the Application of Portland Cement-Based Plaster*.

Adjacent properties are assumed to have step and counter flashing where the buildings intersect. The Contractor shall match the existing material and color and replace/repair the existing flashing with a coping style flashing to protect the top of a masonry parapet masonry wall. If no parapet wall exists, an edge style flashing will be installed instead of coping style. All flashing shall be installed in accordance with standard SMCNA

Architectural sheet metal designs. Contractor may assume that 120 linear feet of flashing is required to waterproof the top of the adjacent walls.

7. **Spill Cleanup:** A release of oil, fuel, coolant, or any other liquids from equipment must be immediately cleaned up to the satisfaction of the City and at no cost. If the release is at or above a reportable quantity, then the Contractor must make the required notifications.
8. **Materials from Demolition:** The Contractor, at its own expense, shall remove from the site and dispose of all materials set forth in the Disposal of Materials in Section 8.0. The following material shall not be disposed unless directed by the Owner or owners representative.

The two pieces of engraved stonework “Union National Bank” on the front and side façade of the building shall be retained by the Contractor. The retained stonework shall be left on-site following completing of the project. A separate line item lump sum cost for completing this task is provided on the Bid Form.

9. **Open Burning:** In compliance with 401 Kentucky Administrative Regulations (KAR) 63:005, no open burning of improvements, trash, debris, or waste material will be permitted. Should open burning by unknown parties take place on the site, the Contractor shall immediately notify the City and the appropriate regional office of the Kentucky Energy and Environment Cabinet, Department of Environmental Protection, Division for Air Quality, and local law enforcement authorities. A written report of these notifications is to be submitted to the City or City’s site representative within 5 working days of the discovery of the burning.
10. **Utilities:** The Contractor shall have all other existing utility services disconnected at the meter or at the service cutoff valves by the proper utility company. Water lines shall be removed to the service meters, and gas lines shall be removed to the service cutoff valve. Sewer lines shall be removed to the main line, or to a minimum depth of three feet below the elevation of the existing grade. Any remaining sewer openings shall be closed with a masonry plug equal to the diameter of the sewer pipe. The Contractor is to coordinate and verify capping and deactivation of utilities with utility providers. The Contractor shall be responsible for all costs and liability associated with damaging any existing utility or structure (above- and/or below-grade) that is not subject to removal, including but not limited to, buildings, utilities, gas lines, fences, sewer lines, etc. The Contractor shall also be responsible for replacing (at the Contractor’s cost) any damaged structures or utilities to fully operational conditions using equal or better materials to the satisfaction of the City. The Contractor shall give advance notice of interruption of storm and sanitary sewer services to the adjoining property owners at least 7 days prior to interruption of the services. Prior to disruption of these services, the Contractor shall also give the adjoining property owners an estimate on how long these services will be unavailable so adjoining property owners can make appropriate arrangements. Time is of the essence regarding reconnection of these lines.

11. **Dust Suppression:** The Contractor shall, at his own expense and in a manner acceptable by the City or City's site representative, spray water on the debris as the work is being performed to eliminate any visible dust from becoming airborne. The Contractor shall not spray excess water at quantities great enough to migrate from the site overland, through conduits, or along the street or roadway drainage features such as gutters and drop boxes.
12. **Sidewalk, Street, and Roadway Cleanliness and Repair:** The Contractor shall keep sidewalks, streets, and roadways free of dirt and debris carried from the site on equipment and vehicle tires and tracks. It is recommended, but not mandatory, that the Contractor video tape the condition of sidewalks, streets, and roadways prior to the beginning of the work. Any damage will be repaired by the Contractor at the Contractor's expense.
13. **Cisterns, Septic Tanks, and Similar Installations:** No cisterns, septic tanks or similar installations are known to exist on the property.
14. **Erosion Prevention and Sediment Control:** The demolition activities may be subject to general stormwater or wastewater permitting and to other requirements relating to erosion prevention, sediment control, and prevention of the release of asbestos fibers. The Contractor shall comply with any such requirements, including all applicable wastewater, stormwater, and flood control regulations. The Contractor will conduct the deconstruction in a manner to avoid or minimize any ponding of stormwater, comply with any stormwater permitting requirements, and minimize the use of portable pumps to manage stormwater containments. The Contractor shall dispose of accumulated wastewater or stormwater in a manner authorized by permit or applicable law.
15. **Basement Backfill:** A basement is located under approximately the rear ½ of the building. Dense grade aggregate (DGA) shall be used to backfill the basement and any other areas of the site to existing grade. The DGA shall be compacted in-place with tracked equipment in 1-foot lifts. Breaching of the basement floor or walls, or other means of water drainage from the basement, shall be employed to prevent the future collection of water. A separate line item unit rate cost for backfill is provided on the Bid Form. A private sewer line may run through this basement into the public sewer in Knox Street. This line should be preserved if located. It is strongly recommended that the work plan utilize a pump to empty the basement of any accumulated water to inspect for this private sewer line prior to backfill activities.
16. **Site Cleanup & Restoration:** The Contractor shall, at all times, keep the project premises and surrounding area free from the accumulation of waste materials or rubbish caused by its operations in connection with the project. Materials will not be allowed to accumulate in a manner that poses safety concerns to the site, site workers, or adjacent properties. Upon completion of the work, and prior to final inspection and acceptance, the Contractor shall remove all remaining waste materials, rubbish, Contractor's construction equipment, tools, machinery, and surplus materials, and leave the project in a clean and usable condition satisfactory to the City and City's site representative. If the Contractor fails to clean up as provided in the contract documents, the City or City's site representative may perform the cleaning tasks and charge the cost to the Contractor. The Contractor will



return the footprint of the building to surrounding grade. The Contractor will not demobilize from the site until the City and City's site representative have inspected the property and have verified completion of any punch list items.

17. ***Safety of Persons and Property:*** The Contractor shall continuously maintain adequate protection of all work from damage and shall protect adjacent properties from injury or loss arising in connection with this contract. Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the specifications or caused by agents or employees of the City. The Contractor shall adequately protect adjacent property as provided by law and the contract. The Contractor shall take all necessary precautions for the safety of employees on the work site, and shall comply with all applicable provisions of federal, state, and local environmental, health, and safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the location where the work is being performed. The City or City's site representative have the right to remove or bar any employee of the Contractor or subContractor for failure to comply with site health, safety, and security requirements. The City or City's site representative also has the authority to suspend work, at the Contractor's expense, if it is determined that unsafe practices are being conducted at any time. All site personnel have the authority to stop any unsafe activity being performed that is a violation of the Contractor's Health & Safety Plan, at no cost to the City.
18. ***Sanitary Facilities for Workers & Water Source:*** The Contractor shall provide portable sanitary facilities for its employees. The facilities are to be periodically maintained to prevent odor issues. The Contractor shall provide a potable water supply for its and subContractor employees. The Contractor shall provide a water source including hoses, water storage tanks, etc. as needed. If the Contractor elects to use a fire hydrant(s) as a water source, the Contractor shall be responsible for securing all applicable permits and satisfying all notification requirements, prior to using the hydrant(s) as a water source.
19. ***Transportation of Material:*** All over-the-road vehicles and drivers are to be U.S. Department of Transportation compliant. Vehicles shall not be loaded over their legal capacity.
20. ***Demobilization:*** The Contractor shall remove all equipment, materials, supplies, and personnel from the site. All non-disposable equipment which has been used during deconstruction and has come into contact with ACMs shall be decontaminated before being removed from the site. Equipment decontamination shall be performed in a designated area (to be proposed by the Contractor). Decontamination of non-disposable equipment that does not come into contact with ACMs shall be deemed complete based on a visual review by the Contractor and/or the City's representative. Equipment that does not meet the "visibly clean" objective shall be re-cleaned by the Contractor (or their subContractor) at no additional cost to the City. Decontamination of such non-disposable equipment shall be conducted using a minimum of appropriate and industry-recognized non-toxic decontamination materials. Decontamination shall take place in a separately constructed decontamination area suitable for the size of the equipment to be decontaminated. The Contractor and their subContractors are responsible for the

collection, containerization, characterization, profiling, transportation, and disposal of decontamination wastes in accordance with all applicable laws, rules, and regulations.

21. **Work Quality:** If any work is found to be incomplete, inadequate, or unsuitable, the Contractor will be required to correct the situation in a timely fashion at no additional cost to the City. If the Contractor does not act sufficiently or in a timely fashion, the City reserves the right to correct the situation using another Contractor and back charge the original Contractor's account for these expenses.

## 5.0 Special Provisions

1. **Fencing and Site Security:** The Contractor shall secure the entire perimeter of the property with temporary 6-foot tall construction fencing. No member of the public shall be allowed to enter the work area. Warning signs with language meeting asbestos abatement regulations shall be placed on the fencing. If necessary, a night-watchman shall be posted to prevent public access to the work site during non-working hours.
2. **Site Access and Equipment Staging:** The Contractor will indicate in its Work Plan where equipment and waste stream containers will be staged on-site.
3. **Proposal Requirements:** The Contractor must provide in its proposal an outline of the methods and means it will use to accomplish the objectives and requirements in these specifications, including sequencing of work, how waste will be segregated (especially segregation of ACM from non-ACM), and how waste will be consolidated, staged, and loaded out prior to off-site transport. Building materials should be recycled to the extent feasible and in compliance with all laws and regulations. All ACM and LBP is to be transported off-site for disposal in a permitted contained landfill. The Contractor must acknowledge that it will not use methods during segregation, waste consolidation, staging, and load-out that will create Regulated ACM (RACM) from non-RACM. The proposal will include a current certificate of insurance and a list of any sub-Contractors.
4. **Contractor's Demolition Work Plan:** The Contractor will be requested to clarify his/her bid relative to the requirements included in this performance-based specification. Within 5 days of award, the Contractor will submit a detailed work plan stating in writing how each of the specified provisions will be met. Included will be a project schedule, contact list, organization chart, how waste and salvage materials are to be documented and tracked, a description of critical path items, a plan for abatement and management of ACMs and LBP, planned actions to mitigate identified problems (emergency and contingency plans), a list and copies of all required permits, notifications, and applications, and a Contractor site-specific Health and Safety Plan (HASP) prepared under the supervision of a qualified health and safety professional, and to include Safety Data Sheets of all materials and chemicals proposed for storage/use on-site. It should be assumed that all paint on building materials is lead-containing, and the Contractor shall incorporate in the HASP whatever OSHA requirements are necessary. The HASP shall cover all personnel who will be employed

by the Contractor, including direct employees and those of sub-Contractors. At a minimum, the HASP must meet the requirements of 29 CFR 1910 and 1926, as applicable.

The Demolition Work Plan shall include descriptions of the means and methods that will be used to safely demolish the building. Primary building elements should be identified with descriptions of sequence, hand or machine demolition, and a list of machines used to accomplish each task.

The Work Plan will also include an Air Quality Monitoring Plan to monitor the airspace of personnel involved with the demolition/removal of ACM and LBP in accordance with 29 Code of Federal Regulations (CFR) 1926.1101 and 29 CFR 1926.62 along with all other applicable local, state, and federal regulations, standards, and codes. The Air Quality Monitoring Plan shall identify the entities selected to perform air monitoring during abatement activities.

The Owner's representative will review the Work Plan and note any deficiencies prior to the start of work. This review shall in no way be construed as permitting any departure from the bid specifications or Contract and does not relieve the Contractor of any responsibility to comply with applicable laws, rules, and regulations.

5. **Documentation:** The Contractor shall, as a condition of final payment, provide all project related documentation, including but not limited to photographs, daily logs, safety meeting records, permits, bills of lading, manifests, weight tickets, citations, incident reports, and proof that all employees and sub-contractors have been paid.
6. **Schedule:** Time is of the essence. Contractor is expected to commence work as soon as permits can be secured and proceed diligently with the work until complete.
7. **Payment Terms:** Payment of any amounts not in dispute will be paid on a pay-when-paid basis.

## 6.0 Asbestos Abatement

1. ACM cannot be safely abated by entering the building prior to demolition. ACM must be managed during demolition.
2. Any demolition activity on the site involving disturbance of ACM shall be conducted by the wet-method to prevent non-friable ACM from becoming friable. Dust shall not be visible during any phase of the operation, including waste load-out. Methods used to remove ACMs during demolition must NOT constitute cutting, sanding, grinding, or abrading. The Contractor must be familiar with and must comply with 40 CFR 61, Subpart M (National Emission Standard for Asbestos), 401 KAR 58:025, and other Kentucky asbestos regulations. The Contractor must have at least one on-site

supervisor trained in the provisions of 40 CFR 61.145, per 40 CFR 61.145(c)(8) and 401 KAR 58:040 and who can act as a competent person as defined in 29 CFR 1926.1101(b). Such person shall be identified and their qualifications/certifications/accreditations provided in the Contractor's Work Plan. The same requirements apply to all asbestos abatement workers employed by the asbestos abatement entity. The Contractor shall bear all costs associated with training, licensing, notifications, and all other fees related to the asbestos abatement entity's ability to perform the work required.

3. All ACM waste shall be placed in covered hard-walled containers lined with 6 mil plastic sheeting. The containers shall be properly placarded and labeled to meet all applicable regulations. All handling, packaging, labeling, and disposal will be performed in accordance with Kentucky regulations.
4. All ACM is to be disposed in a permitted contained landfill regulated by the Kentucky Division of Waste Management (KDWM). Non-ACM containing waste may be disposed in a Construction, Demolition, and Debris landfill regulated by the KDWM. The Contractor must, before waste stream segregation and off-site transport, coordinate with the City's site representative when demolition material is deemed non-ACM. The Contractor shall have made previous contact with the landfills before work begins to assure that each waste profile is acceptable and to ensure that landfill rules are known concerning hours of operation and landfill protocol.
5. It is the Contractor's responsibility to provide all notifications to the regional Kentucky Division for Air Quality (KDAQ) or other applicable agencies for the deconstruction and to obtain any required permits, licenses, certifications, variances, etc. The Contractor is to provide the KDAQ and/or other applicable agencies with any information needed to support alternate abatement methods.
6. It shall be the Contractor's responsibility to ensure that no worker or member of the public is exposed to an airborne asbestos fiber concentration equal to, or greater than, 0.1 fiber per cubic centimeter of air at any time during any portion of the deconstruction process, including during waste load-out and transport.
7. Workers shall use proper respiratory protection devices during any portion of the demolition involving ACMs.
8. The Contractor shall be responsible for all personal and ambient air monitoring, as required by federal, state, and local regulations. The Contractor will conduct (or contract with another party) pre-abatement, during abatement, and post-abatement air monitoring. If during work activities, air quality ACM regulatory levels are exceeded, the Contractor shall immediately take all appropriate measures to reduce the concentration of airborne ACM (e.g., wetting), at no additional cost to the City. The Contractor shall be responsible for achieving post-abatement clearance criteria. Should the work area fail clearance criteria, the area shall be repeatedly cleaned at no additional

cost to the City. The Contractor shall pay for all additional cleaning, testing, and inspections until clearance is achieved.

## 7.0 Lead Based Paint Abatement

1. Lead-based paint (LBP) is assumed to be in the building. Because the building is being demolished no lead based paint removal or encapsulation is anticipated.
2. When sampling is warranted or requested by landfill officials, a representative composite sample shall be collected of each waste stream and tested for lead content utilizing the TCLP procedure. Any waste stream producing results > 5 ppm lead when analyzed by this procedure shall be transported and disposed of as hazardous waste. This testing will be completed by the Abatement Contractor.
3. Landfills Receipts – Retain receipts from landfill for all disposed materials. Recycling – Recipients of materials being recycled must be provided with written test results of lead content or a statement of the presumption of lead.



## 8.0 Disposition of Materials

1. **Approval of Transport, Storage, Disposal, or Recycling Firms/Facilities:** At least one week prior to the transport of any debris, trash, waste, or recyclable materials off-site, the Contractor shall provide to the Owner and Owner's site representative the names, contacts, addresses, and other requested information on proposed transport, storage, disposal, or recycling firms/facilities. The Contractor shall not transport any of these materials off-site until the Owner or Owner's site representative has provided verbal or written approval of the proposed firms/facilities.
2. **Landfills Receipts** – Retain receipts from landfill for all disposed materials.
3. **Debris, Trash, and Waste Materials:** Waste materials will be classified according to intended disposition (i.e. salvage, recycling, treatment, disposal) and will be stored, labeled, transported, and disposed of according to all applicable regulatory requirements. All wastes will be properly packaged, sampled as required, secured in a waste staging area, and properly labeled with content warnings and other information required by applicable laws and regulations. The Owner is to be listed as the generator of waste streams and either an authorized Contractor representative or the Owner's site representative shall sign all manifests or other waste records required for off-site transport and disposal. No debris, trash, or waste material is to be buried on site. All debris, trash, and waste material resulting from the removal of improvements shall be disposed of at a site or facility for which a permit for waste disposal has been issued by the KDWM. The cost of this disposal shall be considered and included in the contract price.

Upon completion of the contract, the Contractor will furnish the Owner and Owner's site representative with the name and address of the waste disposal and salvage/recycling sites used and copies of the disposal manifests, bills of lading, receipts, and certificates of disposal/recycling indicating the quantity of material disposed or recycled.

4. **Materials Requiring Special Disposal:** It shall be the responsibility of the Contractor to properly dispose of or recycle any special waste, such as ACM, LBP, paint cans, light bulbs, light ballasts, mercury-containing devices, etc. in a manner that meets all federal, state, and local regulations. The cost of this special waste disposal shall be considered and included in the contract price. Upon completion of the contract, the Contractor will furnish the Owner and Owner's site representative with the name and address of the disposal site(s) used and copies of the disposal manifests, receipts, and certificates of disposal/recycling, indicating the type and amount of material disposed or recycled.
5. **Other Hazardous Materials:** In the event the Contractor encounters material reasonably believed to be other classified hazardous substances/materials which have not been rendered harmless, the Contractor shall immediately stop work in the affected area and report the condition to the Owner and Owner's site representative. The work in the affected area shall not thereafter be resumed, except by agreement of the Owner and Contractor, if in fact the material is other classified hazardous substances/materials which have not been rendered harmless.

## 10.0 Review & Approval

	Name	Date
Draft Reviewed By:		2/17/2025
Final Reviewed By:		8-14-2025

Complete the Bid Form in **Appendix A** and return with your complete proposal. **Proposals are due by 5:00 pm local time on October 13, 2025.** Pricing shall be honored for 60 days from date of submittal. Dixon Building and LFI reserve the right to select any contractor based on price and/or qualifications, or to select no contractor and not proceed with the project. Pricing shall be honored for 60 days from date of submittal.

# **APPENDIX A**

## **Bid Form**

**BID FORM**  
**Asbestos Abatement and Building Demolition**  
**Dixon Building**  
**Barbourville, Kentucky**

**Bidder Name and Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Bidder Contact Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

Description	Unit	Total Cost
Mobilization/Demobilization, including all permits, submission of Contractor's Work Plan, Health & Safety Plan, and moving resources to and from the project site	Lump Sum	\$ _____
Demolition of building, including waste segregation, consolidation, staging, load-out, transportation, and site cleanup, grading and restoration.	Lump Sum	\$ _____
Waste Disposal	Lump Sum	\$ _____
Apply 2 Coat cementitious stucco to adjacent buildings after demolition and flashing of wall tops	Lump Sum	\$ _____
DGA backfill of the basement.	\$/yard	\$ _____ per yard
Remove and save front and side "Union National Bank" façades.	Lump Sum	\$ _____
<b>TOTAL PROJECT LUMP SUM</b>		\$ _____

**Note:** This completed Bid Form shall be included with proposal. Proposals are due by **5:00 pm local time on October 13, 2025**. A 100% Performance and 5% Bid Bond will be required from the selected Contractor. Pricing shall be honored for 60 days from date of submittal.

Return the proposal to:

Andrew Bergman, PG  
Linebach Funkhouser, Inc.  
114 Fairfax Avenue  
Louisville, Kentucky 40207  
[abergman@lfienv.com](mailto:abergman@lfienv.com)



Contractor shall submit with bid a current Certificate of Insurance (COI), examples of similar projects completed, and a list of subcontractors.

The City of Barbourville ("City" herein) reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalance, or conditional Bids. City further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. City also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms and with the Successful Bidder.

More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

In evaluating Bids, City will consider whether or not the Bids comply with the prescribed requirements, and such alternatives, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

In evaluating Bidders, City will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals of entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted.

City may conduct such investigations as City deems necessary to establish the responsibility, qualifications, and financial ability of bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance the contract Documents.

City is not required to award the contract to the lowest or best bidder. The City reserves the right to reject any and all bids.

# **APPENDIX B**

## **Score Sheet**



# Qualified Abatement Contractor Selection Score Sheet

**Dixon Building**

\_\_\_\_\_  
Name of Firm Being Scored

\_\_\_\_\_  
Name of Reviewer & Date

Score Category	Evaluation Criteria	Awarded Point Threshold Ranges	Awarded Points
<b>A</b>	Cost Proposal/Bid Form (up to 25 points possible)	A. Proposed price is highly reasonable <b>and</b> meets project requirements. – 25 points B. Proposed price is fairly reasonable <b>and</b> meets most project requirements. – 15 points C. Proposed price is not reasonable <b>and/or</b> does not meet project requirements. – 0 points	
<b>B</b>	Experience with Similar Work/Projects (up to 20 points possible)	A. 3 or more completed similar scale/scope work/projects. – 20 points B. 1-2 completed similar scale/scope work/projects. – 10 points C. No similar scale/scope projects completed. – 0 points	
<b>C</b>	Experience & Capacity of Team (up to 20 points possible)	A. Team is highly experienced with excess staffing capacity <b>and</b> ability to meet or exceed project schedule. – 20 points B. Team has some experience with adequate staffing capacity <b>and</b> ability to meet project schedule. – 10 points C. Team has no experience and/or insufficient staffing capacity <b>and</b> unable to meet project schedule. – 0 points	
<b>D</b>	Anticipated Work Plan & Project Schedule (up to 10 points possible)	A. Proposed work plan <b>and</b> project schedule meet project requirements. – 15 points B. Proposed work plan <b>and</b> project schedule meet most project requirements. – 10 points C. Proposed work plan <b>and</b> project schedule do not meet project requirements. – 0 points	
<b>E</b>	Knowledge of Rules & Regulations (up to 15 points possible)	A. Demonstrated high knowledge of applicable rules and regulations, including DBA. – 10 points B. Demonstrated sufficient knowledge of applicable rules and regulations, including DBA. 5 points C. Demonstrated lack of knowledge of applicable rules and regulations, including DBA. – 0 points	
<b>F</b>	References (up to 10 points possible)	A. 3 or more <b>contacted and verified</b> references. – 10 points B. 1-2 contacted and verified references. – 5 points C. No valid references. – 0 points	
<b>TOTAL POINTS AWARDED</b>			

## Score Category Comments:

<b>A</b>	
<b>B</b>	
<b>C</b>	
<b>D</b>	
<b>E</b>	
<b>F</b>	

## **APPENDIX C**

Engineer's Report on Building Stability

June 2021

# POAGE ENGINEERS & ASSOCIATES, INC.

880 SPARTA COURT, SUITE 200

LEXINGTON, KENTUCKY 40504

PHONE: (859) 255-9034

FAX: (859) 252-3130

June 10, 2021

Bill Ed Cannon, P.E.  
P.O. Box 838  
Corbin, Kentucky 40702

Re: Emergency Stabilization  
116 Knox Street  
Barbourville, Kentucky

Dear Mr. Cannon:

The walls and framing for the above referenced property have been reviewed by our office. The inspection involved visual observation of the exposed structural elements and discussion about the building history. My analysis is based upon design values provided by industry standard material specifications. No material tests were performed to determine the actual load-carrying capacity of any structural element. The purpose of the inspection is to evaluate the current condition of the building and to stabilize the building elements (refer to **Figure 1 & Figure 2**).



**Figure 1:** Front elevation of building along Knox Street with Liberty Street on the left.



**Figure 2:** Left elevation of building along Liberty Street.

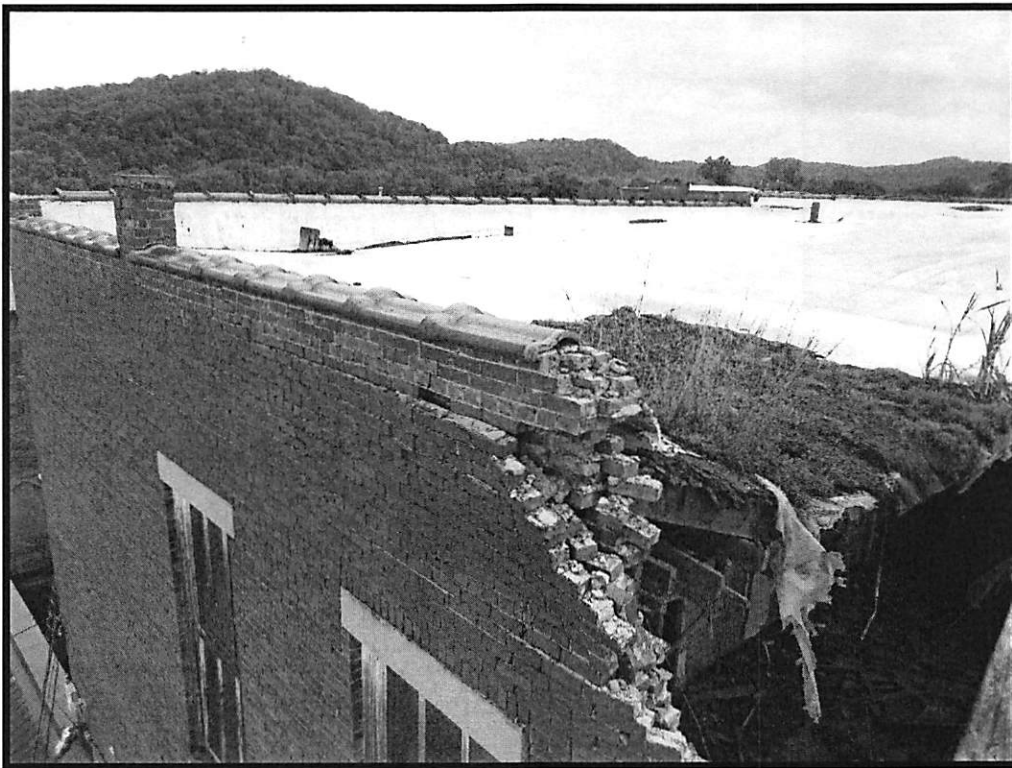
The three story building, which has a footprint of approximately 51'-0"x71'-0", experienced a partial collapse on June 7, 2021. The original roof, which sloped down from front to rear, appeared to collect seeds, dirt, and debris near the left rear corner. The weight of the debris and ponding water caused the rotted and overloaded wood framing to collapse. The roof framing now rests atop the third floor framing, which could only be partially reviewed in the second floor corridor. The third floor does not appear to have collapsed, but the joists have dropped significantly where the connections have sheared or joists have broken. The second floor joists were reviewed from a lift bucket and appear to be stable with only slight damage. The first floor joists could not be reviewed.

The framing appears to be rather consistent with three bays spanning approximately 16'-0" left to right with two beam lines spanning front to rear. The floors appear to consist of 2x12's @ 12" o.c. and the roof appears to consist of 2x10's @ 18" o.c. The last 3-2x8 built-up post near the left rear corner collapsed, but the next one towards the front appears to be stable. If that post fails, however, the framing may collapse back to the next post. The second floor appears to slope down towards the rear near the same point, which is the wall at the top of the stairs.

In general, the front and right walls appear to be stable and no danger at this time. It is my opinion that, the building on the right and Knox Street in front may be occupied. It is my opinion that ***Liberty Street on the left and the building along the rear should not be occupied*** until the risk of further collapsing material can be mitigated. Although a Demolition Plan may be required, what follows are the emergency Work items necessary to provide a safe environment for further reviews and to protect neighboring property.

**STABILIZATION ITEMS (refer to Figures 3 thru 9):**

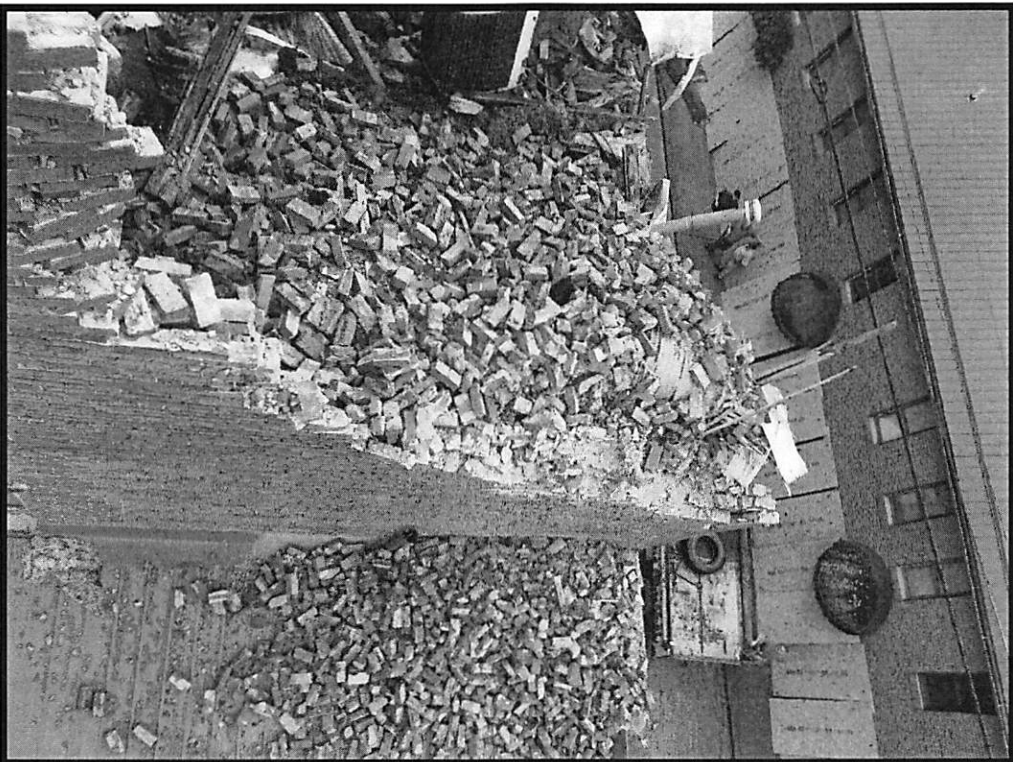
- 1) There are many loose brick above the third floor at the remaining ends of the left and rear walls.  
→ Hand pick from a basket all loose brick with the intent to stair step remaining stable brick as much as possible.
- 2) There is a pile of brick on the adjacent roof behind the rear wall. → After the loose brick of the rear wall has been removed, then remove brick atop this lower roof and protect with plywood or similar barrier.
- 3) There is a pile of brick atop the third floor framing. → Hand pick from a basket at least half the loose material to lessen the load on the third floor framing below.
- 4) The rear area of the building is still dangerous. → Prevent entry of any persons except workers engaged in stabilizing the framing. The two walls indicated above are approximately 32'-0" from the rear wall and are appropriate for controlling access to the damaged area.
- 5) The roof rafters and floor joists are unsupported or overloaded. → Erect a 2x6 stud wall near the middle of the middle bay all floors. Then do the same for the left bay up to the third floor.



**Figure 3: Remaining rear wall loose brick.**



**Figure 4:** Remaining left wall loose brick.



**Figure 5:** Rear wall loose brick atop adjacent property.





Figure 6: Damaged left wall with loose brick and broken wood framing.



**Figure 7:** Restrict access from wall to right back to the rear building wall.



**Figure 8:** Install 2x6 stud wall shoring near center of rear wall window all floors.



**Figure 9:** Second post from rear wall. Do not damage during demolition.

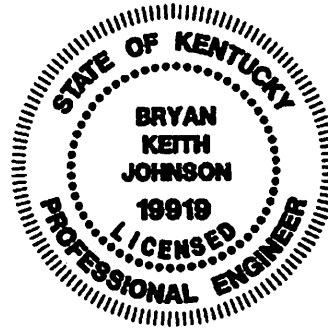
If you have any questions or require further assistance, please contact our office at your convenience.

Respectfully submitted,

POAGE ENGINEERS & ASSOCIATES, INC.




Bryan K. Johnson, P.E.



## **APPENDIX D**

### **Cooperative Agreement**

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 03D22024 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> 4B	<b>DATE OF AWARD</b> 09/09/2024
		<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 09/12/2024
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b>
		<b>RECIPIENT TYPE:</b> Township	
<b>RECIPIENT:</b> City of Barbourville P.O. Box 1300 BARBOURVILLE, KY 40906-1162 <b>EIN:</b> 61-6001779		<b>Send Payment Request to:</b> Contact EPA RTPFC at: rtpfc-grants@epa.gov	
<b>PROJECT MANAGER</b> Corey Moren P.O. Box 1300 BARBOURVILLE, KY 40906-1162 <b>Email:</b> cmoren@barbourville.com <b>Phone:</b> 606-546-6197		<b>EPA PROJECT OFFICER</b> Derek Street 61 Forsyth Street, S.W. Atlanta, GA 30303-8960 <b>Email:</b> street.derek@epa.gov <b>Phone:</b> 404-562-8574	<b>EPA GRANT SPECIALIST</b> Terri Payne Grants Management Section 61 Forsyth Street, S.W. Atlanta, GA 30303-8960 <b>Email:</b> payne.terri@epa.gov <b>Phone:</b> 404-562-9712
<b>PROJECT TITLE AND DESCRIPTION</b> Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements See Attachment 1 for project description.			
<b>BUDGET PERIOD</b> 10/01/2024 - 09/30/2029	<b>PROJECT PERIOD</b> 10/01/2024 - 09/30/2029	<b>TOTAL BUDGET PERIOD COST</b> \$ 1,000,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$ 1,000,000.00
<b>NOTICE OF AWARD</b> <p>Based on your Application dated 11/10/2023 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 750,000.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 750,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 4 61 Forsyth Street Atlanta, GA 30303-8960		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 4, Land Chemicals and Redevelopment Division (LCRD) R4 - Region 4 61 Forsyth Street, S.W. Atlanta, GA 30303-8960	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official</b> Shantel Shelmon - Grants Management Officer			<b>DATE</b> 09/09/2024



## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 21,000
2. Fringe Benefits	\$ 9,000
3. Travel	\$ 4,500
4. Equipment	\$ 0
5. Supplies	\$ 0
6. Contractual	\$ 343,500
7. Construction	\$ 572,000
8. Other	\$ 50,000
9. Total Direct Charges	\$ 1,000,000
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 1,000,000
12. Total Approved Assistance Amount	\$ 1,000,000
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 750,000
15. Total EPA Amount Awarded To Date	\$ 750,000



## **Attachment 1 - Project Description**

This action provides partial funding in the amount of \$750,000 to support the City of Barbourville, Kentucky's ongoing program to revitalize communities. This agreement provides funding under the Infrastructure Investment and Jobs Act (IIJA) to City of Barbourville. The recipient will conduct eligible planning, assessment, and remediation activities as authorized by CERCLA 104(k)(4) in Barbourville, Kentucky.

Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Specifically, this agreement will provide funding to the recipient to plan, inventory, characterize, assess, conduct cleanup planning and community involvement activities, and remediate sites. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to conduct environmental site activities, will create a community involvement plan and administrative record for each site that is remediated, and will report on interim progress and final accomplishments by completing and submitting relevant portions of the Property Profile Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES).

Further, the recipient anticipates conducting 2 Phase I and II environmental site assessments, remediating 1 brownfield site(s), holding 16 community meetings, developing 2 site-specific cleanup plans/Analysis of Brownfield Cleanup Alternatives, developing 1 overall plans for revitalization, developing 1 reuse strategies for 1 priority sites, and submitting 20 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near Barbourville, Kentucky. The proposed subaward to Cumberland Valley Area Development District, a regional governmental organization, for project management, reporting, and financial administration. Additionally, the subaward to Cumberland Valley Area Development District will cover creating outreach materials and organizing quarterly meetings.

# Administrative Conditions

## General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2023-or-later>

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

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

## A. Correspondence Condition

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

- Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) and Terri Payne, [payne.Terri@epa.gov](mailto:payne.Terri@epa.gov), 404-562-9712
- MBE/WBE reports (EPA Form 5700-52A): Terri Payne, [payne.Terri@epa.gov](mailto:payne.Terri@epa.gov), 404-562-9712
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Derek Street, [street.derek@epa.gov](mailto:street.derek@epa.gov), 404-562-8574
- Payment requests (if applicable): Derek Street, [street.derek@epa.gov](mailto:street.derek@epa.gov), 404-562-8574
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Derek Street, [street.derek@epa.gov](mailto:street.derek@epa.gov), 404-562-8574

## B. Pre-Award Costs

In accordance with 2 CFR 1500.9, the recipient may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from October 1, 2024 for The City of Barboursville, Kentucky to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

## C. Contingent Funding

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

## Programmatic Conditions

# FY24 Brownfields Multipurpose Cooperative Agreement

## Terms and Conditions Infrastructure Investment and Jobs Act Funds Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Multipurpose Cooperative Agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k) and the Infrastructure Investment and Jobs Act (IIJA).

### I. GENERAL FEDERAL REQUIREMENTS

**NOTE: For the purposes of these Terms and Conditions, the term “assessment” includes eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA-approved workplan.**

#### A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the

Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2024 competition for Brownfield Multipurpose cooperative agreements.

2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 104(k). The CAR shall also ensure that assessment and 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.

3. The CAR must consider whether it is required to conduct cleanups through 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 EPA Project Officer to ensure the proposed cleanup is protective of human health and the environment.

If the State or Tribe does not have a promulgated response program that is applicable to the planned brownfield activity, then the CAR is required to consult with the EPA Project Officer to ensure the protectiveness of human health and the environment.

4. A term and condition or other legally binding provision shall be included in all subawards entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), applicable federal laws and requirements include 2 CFR Part 200.

5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); 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 § 3145); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.

6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). Assessment activities generally do not involve construction, alteration, and repair within the meaning of the Davis-Bacon Act. However, the recipient must contact the EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary. Cleanup activities are likely to require Davis-Bacon compliance. For more detailed information on complying with Davis-Bacon, please see the [Contract Provisions for Davis-Bacon and Related Acts](#) and the Brownfields Davis-Bacon terms and conditions.

7. Refer to the General Term & Conditions for Buy America Sourcing requirements under the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA; also known as Bipartisan Infrastructure Law or BIL) (P.L. 117-58, §§70911-70917). The CAR can also refer to EPA's [Frequently Asked Questions for BABA](#) for more information.

8. The recipient agrees to have financial management and programmatic management systems in place to:

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

## **II. SITE ELIGIBILITY REQUIREMENTS**

**All brownfield sites that will be addressed using funds from the cooperative agreement must be located within the geographic boundary (i.e., the target area discussed in the FY24 application) described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan).**

### **A. Eligible Brownfield Site Determinations**

1. Prior to performing site work, the CAR must provide information to the EPA Project Officer about each site that will be addressed under this cooperative agreement. The CAR may use cooperative agreement funds to prepare information that is provided to the EPA Project Officer. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability and/or has defenses to CERCLA liability, and documentation that the CAR owns the site it intends to clean up.

2. The CAR may only clean up sites it solely owns that are within the target area specified in the workplan for this cooperative agreement. The CAR must retain ownership of the site (s) while Brownfield Multipurpose Grant funds are disbursed for the cleanup of the site(s) and must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approved a different ownership arrangement at the time of award or the EPA Project Officer advises the CAR that a different ownership is acceptable to EPA for a site after the award.

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

#### 4. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

- i. the State determines there is “no viable responsible party” for the site;
- ii. the State determines that the person addressing the site is a person who is not potentially liable for cleaning up the site; and
- iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

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

the EPA Project Officer for additional information.

b. Documentation must include:

- i. the identity of the State program official contacted;
- ii. the State official's telephone number;
- iii. the date of the contact; and
- iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person addressing the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.4. above, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the determinations.

## **B. Continuing Obligations for CARs**

1. The CAR shall not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA § 107. The CAR must

demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR to maintain its eligible 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)(8)(C). The Landowner Liability Protection requirements include:

a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.

b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through any direct or indirect familial relationship, any contractual, corporate, or financial relationship, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

c. Demonstrating that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).

d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.

e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.

f. Providing full cooperation, assistance, and access to persons that are authorized to



conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.

g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).

h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

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).

CARs that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

### **III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

#### **A. Sufficient Progress**

1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions.

The EPA Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 18 months and 36 months from the date of award. If EPA determines that the CAR has not made sufficient progress in implementing its

cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Grants Management Officer or Award Official. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances.

Sufficient progress at 18 months is indicated when:

- at least 15% of funds have been drawn down and disbursed for eligible activities;
- a Qualified Environmental Professional(s) has been procured;
- assessment or cleanup activities have been initiated;
- community engagement activities have been initiated; and/or
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

Sufficient progress at 36 months is indicated when:

- at least 45% of funds have been drawn down and disbursed for eligible activities;
- Phase II environmental site assessment and cleanup activities are ongoing at least one site; and/or
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

Other documented activities may include, but are not limited to, sites are prioritized or an inventory has been initiated, relevant state or tribal pre-cleanup requirements are being addressed, an appropriate remediation plan is in place for at least one eligible brownfield site, institutional control development has commenced, a feasible reuse strategy for one site has been developed, and/or an overall plan for revitalization has been developed.

## **B. Substantial Involvement**

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.

- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.
  
- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
  
- d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2. and II.A.3.) and when the CAR awards a subaward for site assessment. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)
  
- e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- f. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
  - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.
  
  - ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.

iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)

iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.

g. Reviewing and approving that the Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, meets the Brownfields Program's requirements for an ABCA.

h. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate. This may include reviewing requests for proposals, invitations for bid, scopes of work and/or plans and specifications for contracts over \$250,000 prior to advertising for bids.

i. Reviewing the qualifications of key personnel. (EPA does not have the authority to select employees or contractors, including consultants, employed by the CAR or subrecipients receiving pass-through awards.)

j. Reviewing information in performance reports to ensure all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – e. in Section III.B.1. in writing.

2. Effects of EPA's substantial involvement include:

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 rights, authorities, and actions under CERCLA or any federal statute.

b. The CAR remains responsible for ensuring that all assessments and cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.

c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

## **C. Cooperative Agreement Recipient Roles and Responsibilities**

1. Funds expended under this cooperative agreement must be used to complete at least one Phase II environmental site assessment, to conduct cleanup activities at one or more brownfield sites within the target area, and to produce one overall plan for revitalization of one or more sites in the target area (if a plan does not already exist), as specified in the workplan. The overall plan for revitalization must include a feasible reuse strategy for at least one site. If a CAR is not making sufficient progress and appears unlikely to complete these cooperative agreement requirements, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances, as referenced in Section III. A.

2. All additional sites selected for eligible activities throughout the period of performance (i.e., sites that were not identified in the workplan) must be located within the geographic boundary identified by the CAR in the workplan.

Consistent with the FY24 Multipurpose Grant Guidelines, criteria for selecting additional sites must at least consider whether the site is located within an underserved community<sup>[1]</sup> or disadvantaged census tract, as identified through the Climate and Environmental Justice Screening Tool (CEJST), in addition to considering the prioritization criteria identified in the FY24 application, the workplan, or developed during implementation of the workplan. Note, criteria developed during the implementation of the workplan must lead to the CAR

addressing sites in areas with similar characteristics as the areas discussed in the FY24 application.

3. If the CAR's workplan includes eligible planning activities to prepare a brownfield site for reuse (see <https://www.epa.gov/brownfields/information-eligible-planning-activities> for eligible planning activities), the CAR must demonstrate meaningful community engagement in the reuse planning of brownfields assessed under the grant. Meaningful community engagement is demonstrated by actively including local nonprofit organizations, citizen leaders, or similar local groups/entities in brownfield reuse planning.

4. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. This requirement also applies to procurement processes that were completed before the award of this cooperative agreement. See the [Brownfields Grants: Guidance on Competitively Procuring a Contractor](#) for additional information.

CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to conduct site remediation activities vs. community engagement) and to allow the ability for work be performed concurrently at multiple sites within the defined and approved geographic boundary.

5. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff to coordinate, direct, and oversee the brownfield site assessment and cleanup activities at a given site.

6. *Subawards* are defined at 2 CFR § 200.1. The CAR shall not subaward to for-profit organizations or individual consultants. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 2 CFR §§ 200.317 through 200.327. The CAR must obtain written approval from the EPA Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR § 200.308.

In addition, EPA policy encourages awarding subawards competitively and the CAR must consider awarding subawards through competition. Recipients may consult EPA's [Subaward Policy](#) and [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA](#)

[Assistance Agreements](#) for additional guidance. The Best Practice Guide provides information on distinguishing between subawards and procurement contracts.

8. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

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

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

b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

9. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

## D. Quarterly Performance Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly performance reports to the EPA Project Officer within 30 days after each reporting period. Initially, quarterly performance reports will be submitted via email or via the optional Quarterly Reporting function tool within the Assessment, Cleanup and Redevelopment Exchange System (ACRES). However, once EPA has developed and incorporated the Quarterly Performance Reporting tool into ACRES, the CAR agrees to use this tool to input quarterly performance reports directly into ACRES within 30 days after each reporting period. (The EPA Project Officer will notify the CAR when use of this tool in ACRES is required). The reporting periods are October 1 – December 31 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> quarter). If a due date falls on a weekend or holiday, the report will be due on the next business day.

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies from the EPA-approved workplan and budget shall be included in the report. The report shall also include any changes of key personnel concerned with the project that were approved by the EPA Grants Management Officer or Award Official. (Note, as provided at 2 CFR § 200.308, *Revision of budget and program*, the CAR must seek prior approval from the EPA Grants Management Officer or Award Official for a change in a key person.)

2. The CAR must submit performance reports on a quarterly basis in ACRES. Quarterly performance reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Multipurpose cooperative agreement and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.



- c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
  
- d. An update on the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
  
- e. A list of the properties where assessment and cleanup activities (and planning activities, if applicable) were performed and/or completed during the reporting quarter.
  
- f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used (if applicable) (i.e., program income received and disbursed during the reporting quarter and during the entire cooperative agreement, and the amount of program income remaining); and total remaining funds. The budget summary table must include costs that are charged to the “other” budget object class category (e.g., participant support costs, subawards, etc.).

The CAR shall include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information. The CAR shall include a statement on funding transfers<sup>[2]</sup> among direct budget categories or programs, functions and activities that occurred during the quarter and cumulatively during the period of performance.

Note: ACRES reporting requirements can change over time, based on expansion of EPA's information collection authority, and the CAR is responsible for complying with the latest ACRES reporting requirements at the time of each quarterly performance report. The EPA Project Officer will notify the CAR when ACRES reporting requirements, specific to Brownfields Multipurpose, change.

Note: Each property where assessment and cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly performance report (see Section III.E. below).

3. Because the workplan and budget for this agreement include subawards, the CAR is a pass-through entity under the “Establishing and Managing Subaward” General Term and Condition of this agreement. As the pass-through entity, the CAR must report to EPA on its subaward monitoring activities under [2 CFR § 200.332\(d\)](#), including the following information on subawards as part of the CAR's quarterly performance reporting:

- a. Summaries of results of reviews of financial and programmatic reports;
- b. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance;
- c. Environmental results the subrecipient achieved;
- d. Summaries of audit findings and related pass-through entity management decisions, if any; and
- e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.332\(e\)](#), [2 CFR § 200.208](#), [Specific conditions](#), and [2 CFR § 200.339, Remedies for Noncompliance](#).

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess and clean up the specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1), the CAR agrees to inform the EPA Project Officer as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

## **E. Property Profile Submission**

1. The CAR must report on interim progress (e.g., assessments started, clean up started, reuse planning activities started) and any final accomplishments (e.g., assessments completed, clean up required, clean up completed, contaminants found, contaminants removed, institutional controls required, engineering controls required) by completing and submitting relevant portions of the electronic Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly performance report to the EPA Project Officer. The CAR must utilize the electronic version of the Property Profile Form in ACRES unless approval is obtained from the EPA Project Officer to use the hardcopy version of the Property Profile Form or its use is included in the approved workplan.

## **F. Final Cooperative Agreement Performance Report with Environmental Results**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final performance report on the cooperative agreement via email; unless the EPA Project Officer agrees to accept a paper copy of the report. The final performance report shall document and summarize the elements listed in Section III.D.2., as appropriate, for activities that occurred over the entire project period.

# **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

## **A. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and clean up sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites in the target area; conduct outreach and community engagement; and for reasonable participant support costs associated with one community liaison identified in the selected FY24 application. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Determining whether assessment and cleanup activities at a particular site are authorized by CERCLA § 104(k).
- b. Ensuring that an assessment and cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Limited Site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
- d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
- e. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
- f. Establishing an Administrative Record for each site.
- g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in *Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance* available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.
- h. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment, or remediation of the site. [Funds shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient*.]
- i. Any other eligible programmatic costs, including direct costs incurred by the

recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and managing subawards to the extent required to comply with 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out community engagement pertaining to the assessment and cleanup activities.

3. Under CERCLA § 104(k)(5)(E), CARs and subrecipients may use up to 5% of the sum of direct EPA funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is \$50,000. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403 (d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. The term “administrative costs” does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. design and performance of a response action; or
- c. monitoring of a natural resource.

Eligible cooperative agreement and subaward administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.

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

- ii. Preparing revisions and changes in the budgets, scopes of work, program

plans and other activities required under 2 CFR § 200.308;

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

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

v. Financial reporting under 2 CFR § 200.328;

vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and

vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subawards are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

## **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. 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;

- b. Construction, demolition, and site development activities that are not brownfield assessment activities or cleanup actions (e.g., marketing of property (activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);
- c. General community visioning, area-wide zoning updates, design guideline development, master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates – these activities are all ineligible uses of grant funds if unrelated to advancing cleanup and reuse of brownfield sites within the target area. Note: for these types of activities to be an eligible use of grant funds, there must be a specific nexus between the activity and how it will help further cleanup and reuse of the priority brownfield site(s). This nexus must be clearly described in the workplan for the project;
- d. Job training activities unrelated to performing a specific assessment or cleanup at a site covered by the cooperative agreement;
- e. To pay for a penalty or fine;
- f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
- g. To pay for a response cost at a brownfield site for which the CAR or subaward recipient is potentially liable under CERCLA § 107;
- h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment or cleanup; and
- i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
- c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

## **V. MULTIPURPOSE REQUIREMENTS**

### **A. Authorized Activities**

1. 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 the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

2. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, 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, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events and changing climate conditions (e.g., sea level rise, drought, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or



employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis and documented in a decision document upon completion of the public comment period. The CAR must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.

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

Authority: Quality Assurance applies to all assistance agreements involving environmental information as defined in [2 C.F.R. § 1500.12](#) Quality Assurance.

When environmental data are collected as part of the brownfield assessment, the CAR shall comply with 2 CFR § 1500.12 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.

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

### **1. Quality Management Plan (QMP)**

a. Prior to beginning environmental information operations, the recipient must:

i. Develop a QMP if the EPA Project Officer, in coordination with the EPA Quality Assurance Manager or designee (hereafter referred to as the QAM), determine a QMP is necessary,

ii. Prepare the QMP in accordance with the current version of EPA's [Quality Management Plan \(QMP\) Standard](#). Submit the document for EPA review, and

iii. Obtain EPA Quality Assurance Manager or designee.

b. The recipient must submit the QMP within 180 days, or another timeframe agreed to by the EPA Project Officer, after grant award. (QAM may specify both timeframes or specify only one timeframe and remove the other.)

c. The recipient must review their approved QMP at least annually. These reviews shall be documented. If no revisions are needed, the recipient shall provide written confirmation to the EPA Project Officer. If minor revisions are needed, the recipient shall revise its QMP to incorporate minor changes and notify the EPA Project Officer and QAM of the changes and provide a copy of the finalized QMP. If the annual review identifies significant changes to the QMP are necessary, the QMP must be revised and resubmitted to the EPA for re-approval. Example conditions requiring the revision and resubmittal of an approved QMP can be found in section 6 of EPA's [Quality Management Plan \(QMP\) Standard](#).

d. The recipient must submit a QMP crosswalk with the QMP. The EPA Project Officer will provide a copy of the current QMP crosswalk.

## **2. Quality Assurance Project Plan (QAPP)**

a. Prior to beginning environmental information operations, the recipient must:

i. Develop a QAPP (the QAPP is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include, but are not limited to, direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data

supporting the design, construction, and operation of environmental technology),

ii. Prepare QAPP in accordance with the current version of EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#),

iii. Submit the document for EPA review within 180 days, or another timeframe agreed to by the EPA Project Officer, and

iv. Obtain EPA Quality Assurance Manager or designee approval.

b. The recipient must submit the QAPP no more than 180 days after grant award unless an extension is approved by the Project Officer.

c. The recipient shall notify the EPA Project Officer and the EPA Quality Assurance Manager or designee when substantive changes are needed to the QAPP and submit the QAPP to the EPA for review and approval

d. The recipient must review their approved QAPP at least annually. These reviews shall be documented. If no revisions are needed, the recipient shall provide written confirmation to the EPA Project Officer. If minor revisions are needed, the recipient shall revise its QAPP to incorporate minor changes and notify the EPA Project Officer and QAM of the changes and provide a copy of the finalized QAPP. If the annual review identifies significant changes to the QAPP are necessary, the QAPP must be revised and resubmitted to the EPA for re-approval. Example conditions requiring the revision and resubmittal of an approved QAPP can be found in section 5 of EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#).

e. The recipient must submit a QAPP Crosswalk with the QAPP. The EPA Project Officer will provide a copy current QAPP Crosswalk.

**For Reference:**

- [Quality Management Plan \(QMP\) Standard and EPA's Quality Assurance Project Plan \(QAPP\) Standard](#); contain quality specifications for EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [Region 4 Brownfields Quality Assurance Project Plan Standard Toolbox](#) has various templates and crosswalks to assist with the development of brownfields QAPPs.
- [EPA's Quality Program](#) website has a [list of QA managers](#), and [Non-EPA Organizations Quality Specifications](#).
- The Office of Grants and Debarment [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).

**3. Competency of Organizations Generating Environmental Measurement Data:**

In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at <https://www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-assistance-agreements> or a copy may also be requested by contacting the EPA Project Officer for this award.

**C. Public Involvement and Community Outreach**

1. All cleanup activities require a site-specific Community Involvement Plan. The plan must include providing reasonable notice to the community and opportunity for public

involvement and comment on the proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.

## D. Public Awareness

1. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.

a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.

b. If the EPA logo is displayed along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the [Insert CAR or subrecipient NAME] received financial support from the EPA under an Assistance Agreement per the term and condition described in Section V.D.1.a. above. More information is available at <https://www.epa.gov/stylebook/using-epa-seal-and-logo>.

c. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a "project funded by President Biden's Bipartisan Infrastructure Law." The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at <https://www.epa.gov/invest/investing-america-signage>.

d. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable.

Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

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

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

4. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

## **E. All Appropriate Inquiry**

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all appropriate inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-21 "*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*" (or the latest recognized

ASTM standard at the time the assessment is performed), or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in *"All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content"* (Publication Number: EPA 560-F-23-004 (or the latest available publication)). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable state standards.

2. AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to the EPA Project Officer as deliverables under this agreement must be accompanied by a completed *"All Appropriate Inquiries: Reporting Requirements Checklist for Assessment and Multipurpose Grant Recipients"* (Publication Number: EPA 560-F-23-017 (or the latest available publication)) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA's website at <https://www.epa.gov/brownfields/all-appropriate-inquiries-reporting-requirements-checklist-assessment-grant-recipients>. The completed checklist must include:

a. An ***opinion*** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

b. An identification of ***"significant" data gaps*** (as defined in 40 CFR § 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

c. ***Qualifications and signature*** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

- *"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we]*

*meet the definition of Environmental Professional as defined in 40 CFR § 312.10 of this part."*

- “[I, We] have the specific qualifications based on education, training, and experience to

*assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”*

**Note: Please use either “I/my” or “We/our.”**

d. In compliance with 40 CFR § 312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation***, if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR Part 312 (or comparable requirements for those using ASTM Standard 1527-21 or the latest recognized ASTM standard at the time the assessment is performed). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR § 200.339. If a recipient willfully fails to correct the deficiencies EPA may consider other available remedies under 2 CFR § 200.339 and 2 CFR § 200.340.

## **F. Administrative Record**

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; 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. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination.

## **G. 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.

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 EPA to ensure an orderly transition should additional activities become necessary.

## **H. Completion of Assessment and Cleanup Activities**

1. The CAR shall properly document the completion of all activities described in the EPA-approved workplan. 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 assessments and cleanups are complete. Documentation of the completed cleanups must be included as part of the Administrative Record.

## **I. Inclusion of Additional Terms and Conditions**

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative agreement for a minimum of three (3) years following submission of the final financial report unless one or more of the conditions described in the regulation applies. The CAR shall provide access to records relating to assessments and cleanups supported with Multipurpose cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.337.

2. The CAR has an ongoing obligation to advise EPA if it assessed any penalties resulting from environmental noncompliance at sites subject to this agreement.

## **VI. PAYMENT AND CLOSEOUT**

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA's transfer of funds to the CAR; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have

been completed.

## **A. Payment Schedule**

1. The CAR may request advance payment from EPA pursuant to 2 CFR § 200.305(b)(1) and the prompt disbursement requirements of the General Terms and Conditions of this agreement.

This requirement does not apply to states which are subject to 2 CFR § 200.305(a).

## **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 2 CFR § 200.344. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.

2. The CAR, within 120 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement.

a. The CAR must submit the following documentation:

i. The Final Cooperative Agreement Performance Report as described in Section III.F. of these Terms and Conditions.

ii. Administrative and Financial Reports as described in the General Terms and

## Conditions of this agreement.

b. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

c. As required by 2 CFR § 200.344, the CAR must immediately refund to EPA any balance of unobligated (unencumbered) advanced cash or accrued program income that is not authorized to be retained for use on other cooperative agreements.

[1] When EPA uses the term “underserved communities” it has the meaning defined in Executive Order 13985: *Advancing Racial Equity And Support For Underserved Communities Through The Federal Government*, which defines “underserved communities” as “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life as exemplified in the preceding definition of equity.” As described in the Executive Order, the term “equity” means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, which may include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. It also includes “communities environmentally overburdened,” that is, a community adversely and disproportionately affected by environmental and human health harms or risks, and “disadvantaged, communities” as referenced in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, and defined in Office of Management and Budget’s Memo M-21-28: Interim Implementation Guidance for the Justice40 Initiative.

[2] For the purposes of EPA's General Term and Condition “Transfer of Funds” the term “activities” includes assessment, planning, and cleanup. The CAR must obtain prior approval from the EPA Grants Management Officer or Award Official for cumulative transfers of funds in excess of 10% of the total budget among these activities.

## Davis-Bacon Term and Condition for Brownfields

### 1. Program Applicability

- a. **Program Name:** Brownfields Program
- b. **Statute:** Brownfields Direct Cleanup and Revolving Loan Fund Grants authorized by 42 U.S.C. 9604(k) are subject to Davis-Bacon and Related Acts (DBRA) as provided in 42 U.S.C. 9604(g)
- c. **Activities subject to Davis-Bacon:**
  - i. **Brownfield Sites Contaminated with Hazardous Substances:** All construction, alteration, and repair activity involving the remediation of hazardous substances is subject to DBRA. This includes:
    - Excavation of contaminated soil;

- Construction of caps, barriers, and structures which permanently house treatment equipment;
- Installation of water supply wells/piping/connections;
- Abatement of contamination in buildings; and
- Demolition (if followed by new construction).

1.

- ii. **Brownfield Sites Contaminated with Petroleum:** DBRA prevailing wage requirements apply when the project includes:

- Excavation of contaminated soil and/or tank removal if followed by paving and concrete replacement, or if it is an extensive soil excavation project;
- Construction of caps, barriers, and structures which permanently house treatment equipment; and
- Installation of water supply wells/piping/connections and related excavation and replacement of contaminated soil.

- d. **Prevailing Wage Classification (e.g., Heavy Construction, Residential, Commercial) (optional):**

- **Heavy Construction:** EPA has determined the “Heavy Construction” classification should be used when soliciting competitive contracts or issuing ordering instruments to existing contractors for:

- Excavation and removal of contaminated soil;
- Construction of caps or barriers;
- Replacement of paving and concrete; and
- Installation of water supply wells/piping/connections.

- **Building Construction:** EPA has determined the “Building Construction” classification should be used when soliciting competitive contracts or issuing ordering instruments for the construction of:

- Demolition (if followed by new construction);
- Construction of structures which permanently house treatment equipment; and
- Abatement of contamination in buildings (other than residential structures less than 4 stories in height).

- **Residential Construction:** EPA has determined the “Residential Construction” classification should be used when soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height.

## 2. **Davis-Bacon and Related Acts**

[DBRA](#) is a collection of labor standards provisions administered by the Department of Labor, that are applicable to grants involving construction. These labor standards include the:

- Davis-Bacon Act, which requires payment of prevailing wage rates for laborers and mechanics on construction contracts of \$2,000 or more

- Copeland “Anti-Kickback” Act, which prohibits a contractor or subcontractor from inducing an employee into giving up any part of the compensation to which he or she is entitled; and
- Contract Work Hours and Safety Standards Act, which requires overtime wages to be paid for over 40 hours of work per week, under contracts in excess of \$100,000.

3. **Recipient Responsibilities When Entering Into and Managing Contracts:**

c. **Solicitation and Contract Requirements:**

- iii. **Include the Correct Wage Determinations in Bid Solicitations and Contracts:** Recipients are responsible for complying with the procedures provided in [29 CFR 1.6](#) when soliciting bids and awarding contracts.
- iv. **Include DBRA Requirements in All Contracts:** Include the following text on all contracts under this grant:

“By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#).”

1.

b. **After Award of Contract:**

- ii. **Approve and Submit Requests for Additional Wages Rates:** Work with contractors to request additional wage rates if required for contracts under this grant, as provided in [29 CFR 5.5\(a\)\(1\)\(iii\)](#).
- iii. **Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions:** Ensure contractor compliance with the terms of the contract, as required by [29 CFR 5.6](#).

4. **Recipient Responsibilities When Establishing and Managing Additional Subawards:**

d. **Include DBRA Requirements in All Subawards (including Loans):**

Include the following text on all subawards under this grant:

“By accepting this award, the EPA subrecipient acknowledges and agrees to the terms and conditions provided in the [DBRA Requirements for EPA Subrecipients](#).”

1.

- b. **Provide Oversight to Ensure Compliance with DBRA Provisions:** Recipients are responsible for oversight of subrecipients, and must ensure subrecipients comply with the requirements in [29 CFR 5.6](#).

- 5. The contract clauses set forth in this Term & Condition, along with the correct wage determinations, will be considered to be a part of every prime contract covered by Davis-Bacon and Related Acts (see [29 CFR 5.1](#)), and will be effective by operation of law, whether or not they are included or incorporated by

reference into such contract, unless the Department of Labor grants a variance, tolerance, or exemption. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

## **APPENDIX E**

### **Knox County Prevailing Wages**

"General Decision Number: KY20240043 01/05/2024

Superseded General Decision Number: KY20230043

State: Kentucky

Construction Type: Building

Counties: Breathitt, Clay, Elliott, Floyd, Harlan, Jackson,  
Johnson, Knott, Lee, Leslie, Letcher, Magoffin, Martin, Morgan,  
Owsley, Perry and Wolfe Counties in Kentucky.

BUILDING CONSTRUCTION PROJECTS (does not include single family  
homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally  
required to pay at least the applicable minimum wage rate  
required under Executive Order 14026 or Executive Order 13658.

Please note that these Executive Orders apply to covered  
contracts entered into by the federal government that are  
subject to the Davis-Bacon Act itself, but do not apply to  
contracts subject only to the Davis-Bacon Related Acts,  
including those set forth at 29 CFR 5.1(a)(1).

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If the contract is entered	. Executive Order 14026		
into on or after January 30,	generally applies to the		
2022, or the contract is	contract.		
renewed or extended (e.g., an	. The contractor must pay		
option is exercised) on or	all covered workers at		
after January 30, 2022:	least \$17.20 per hour (or		
	the applicable wage rate		
	listed on this wage		
	determination, if it is		
	higher) for all hours		
	spent performing on the		
	contract in 2024.		
\_\_\_\_\_		\_\_\_\_\_	

If the contract was awarded on	. Executive Order 13658		
or between January 1, 2015 and	generally applies to the		
January 29, 2022, and the	contract.		
contract is not renewed or	. The contractor must pay all		
extended on or after January	covered workers at least		
30, 2022:	\$12.90 per hour (or the		
	applicable wage rate listed		
	on this wage determination,		
	if it is higher) for all		
	hours spent performing on		
	that contract in 2024.		
\_\_\_\_\_		\_\_\_\_\_	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number    Publication Date

0            01/05/2024

ASBE0080-011 02/27/2023

	Rates	Fringes
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ASBESTOS WORKER/HEAT & FROST

INSULATOR.....	\$ 34.50	25.67
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BOIL0040-001 01/01/2021

	Rates	Fringes
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BOILERMAKER.....	\$ 37.60	27.49
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CARP0472-004 06/01/2023

Rates	Fringes
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CARPENTER (Drywall Hanging  
and Metal Stud Installation

Only).....	\$ 34.90	24.48
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ELEC0317-005 05/29/2023

Rates	Fringes
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ELECTRICIAN.....	\$ 37.15	22.73
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ENGI0181-083 06/01/2021

Rates	Fringes
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POWER EQUIPMENT OPERATOR  
(Bobcat/Skid Steer/Skid

Loader).....	\$ 33.51	17.85
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ENGI0181-084 06/01/2021

Rates      Fringes

POWER EQUIPMENT OPERATOR

(Oiler).....\$ 29.70      17.85

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ENGI0181-090 06/01/2021

Rates      Fringes

POWER EQUIPMENT OPERATOR

(Crane).....\$ 35.34      17.85

CRANES WITH BOOM 150 FEET & OVER, INCLUDING JIB, SHALL  
RECEIVE \$.50 ABOVE THE WAGE RATE.

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ENGI0181-091 06/01/2021

Rates      Fringes

POWER EQUIPMENT OPERATOR

(Forklift).....\$ 35.34      17.85

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IRON0769-002 06/01/2023

Rates      Fringes

IRONWORKER (Structural and

Reinforcing)

ZONE 1.....	\$ 36.16	28.34
ZONE 2.....	\$ 36.56	28.34
ZONE 3.....	\$ 38.16	28.34

ZONE 1 - (no base rate increase) Up to 10 mile radius of  
Union Hall, 1643 Greenup Ave, Ashland, KY.

ZONE 2 - (add \$0.40 per hour to base rate) 10 to 50 mile  
radius of Union Hall, 1643 Greenup Ave, Ashland, KY.

ZONE 3 - (add \$2.00 per hour to base rate) 50 mile radius &  
over of Union Hall, 1643 Greenup Ave, Ashland, KY.

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LABO0189-007 06/01/2023

	Rates	Fringes
LABORER (Pipelayer).....	\$ 26.75	15.63

-----  
LABO1392-004 07/01/2023

	Rates	Fringes
LABORER (Mason Tender - Brick)...	\$ 23.99	15.78

-----  
PAIN1072-005 12/01/2022

	Rates	Fringes
PAINTER (Spray Only).....	\$ 29.49	23.35

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PAIN1195-003 12/01/2022

	Rates	Fringes
GLAZIER.....	\$ 32.00	12.22

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PLAS0132-015 06/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.54	18.59

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PLUM0248-001 06/01/2023

	Rates	Fringes
PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 41.00	22.95

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SFKY0669-002 04/01/2023

	Rates	Fringes
SPRINKLER FITTER.....	\$ 39.52	25.22

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SHEE0110-006 06/01/2021

	Rates	Fringes
SHEET METAL WORKER (Excludes HVAC Duct Installation).....	\$ 33.74	23.31

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UAVG-KY-0007 01/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 32.49	25.93

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UAVG-KY-0008 01/01/2023

	Rates	Fringes
LABORER: Power Tool Operator....	\$ 26.87	17.81

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SUKY2015-024 06/02/2015

	Rates	Fringes
BRICKLAYER.....	\$ 24.61	11.88

CARPENTER (Form Work Only).....	\$ 20.69	9.05
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CARPENTER, Excludes Drywall

Hanging, Form Work, Hardwood

Floor Laying, and Metal Stud

Installation.....	\$ 25.25	12.07
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LABORER: Common or General.....	\$ 20.36	11.20
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LABORER: Mason Tender -

Cement/Concrete.....	\$ 22.27	10.42
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OPERATOR:

Backhoe/Excavator/Trackhoe.....	\$ 23.56	11.05
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OPERATOR: Bulldozer.....	\$ 25.36	13.00
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OPERATOR: Grader/Blade.....	\$ 24.33	13.00
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PAINTER (Brush and Roller).....	\$ 18.36	7.07
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PIPEFITTER (HVAC Pipe

Installation Only).....	\$ 25.63	20.94
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PLUMBER.....	\$ 32.60	18.78
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ROOFER.....	\$ 22.31	7.41
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SHEET METAL WORKER (HVAC Duct

Installation Only).....	\$ 22.86	13.00
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TILE FINISHER.....	\$ 17.67	7.45
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TILE SETTER.....\$ 25.77      6.10

TRUCK DRIVER: Dump Truck.....\$ 17.07 \*\*      6.25

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher  
minimum wage under Executive Order 14026 (\$17.20) or 13658  
(\$12.90). Please see the Note at the top of the wage  
determination for more information. Please also note that the  
minimum wage requirements of Executive Order 14026 are not  
currently being enforced as to any contract or subcontract to  
which the states of Texas, Louisiana, or Mississippi, including  
their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours

they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical

order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union

average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests

for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

# **APPENDIX F**

## Davis-Bacon Act Requirements



## **Davis-Bacon Terms and Conditions For Cooperative Agreements to**

### **Nonprofits**

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

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

#### **1. Applicability of the Davis-Bacon Prevailing Wage Requirements**

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

Hazardous substances contamination:

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

Petroleum contamination:

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

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

If the CAR encounters a unique situation at a site (e.g., unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

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

(a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain proposed wage determinations for specific localities at <https://sam.gov/>. After the CAR obtains its proposed wage determination, it must submit the wage determination to EPA Davis-Bacon National Coordinator, Dominick Washington, [washington.dominick@epa.gov](mailto:washington.dominick@epa.gov) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by EPA's Award Official.

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

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

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

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

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

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

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

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

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

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

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

(ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL

pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the CAR carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument. that is used solely for the underground storage of fuel or other contaminant the CAR shall use the “Heavy Construction” classification. (Only applies to petroleum contamination.)

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

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

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

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

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

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

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

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR’s contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does

not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

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

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

(1) Minimum wages.

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

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

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

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

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

disapprove every additional classification action within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary.

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

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

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

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

## (2) Withholding.

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

## (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

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

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

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

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

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

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

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

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

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

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

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

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



## **5. Compliance Verification**

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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