

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	GRANT NUMBER (FAIN): 02D63223	DATE OF AWARD
		MODIFICATION NUMBER: 0	09/01/2023
		PROGRAM CODE: 4B	
		TYPE OF ACTION New	MAILING DATE 09/07/2023
<b>PAYMENT METHOD:</b> ASAP		<b>ACH#</b> 40635	
<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> Contact EPA RTPFC at: rtpfc-grants@epa.gov	
<b>RECIPIENT:</b> City of Marion 194 North Main Street Marion, NC 28752 <b>EIN:</b> 56-6001607		<b>PAYEE:</b> City of Marion 194 North Main Street Marion, NC 28752	
<b>PROJECT MANAGER</b>	<b>EPA PROJECT OFFICER</b>		<b>EPA GRANT SPECIALIST</b>
Heather Cotton 194 North Main Street Marion, NC 28752 <b>Email:</b> hcotton@marionnc.org <b>Phone:</b> 828-652-3551	Brian Gross 61 Forsyth St., S.W. Atlanta, GA 30303 <b>Email:</b> gross.brian@epa.gov <b>Phone:</b> 404-562-8604		Jasmine Williams Grants Management Section 61 Forsyth St., S.W. Atlanta, GA 30303-8960 <b>Email:</b> williams.jasmine@epa.gov <b>Phone:</b> 404-562-9334
<b>PROJECT TITLE AND DESCRIPTION</b> Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements			
This action approves an award in the amount of \$500,000 under the Infrastructure Investment and Jobs Act (IIJA) to the City of Marion North Carolina to conduct remediation activities as authorized by CERLCA 104(k)(3) in Marion, North Carolina. 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 clean up a brownfield site(s). 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 the site(s), 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 will remediate one brownfield site(s) and anticipates holding community meetings, finalizing an Analysis of Brownfield Cleanup Alternatives, and submitting up to 16 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near Marion, North Carolina. No subawards are included in this assistance agreement.			
<b>BUDGET PERIOD</b> 07/01/2023 - 06/30/2027	<b>PROJECT PERIOD</b> 07/01/2023 - 06/30/2027	<b>TOTAL BUDGET PERIOD COST</b> \$500,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$500,000.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 11/21/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$500,000.00. 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 \$500,000.00. 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.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b> <b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 4 61 Forsyth Street Atlanta, GA 30303-8960		<b>AWARD APPROVAL OFFICE</b> <b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 4, Land, Chemicals and Redevelopment Division R4 - Region 4 61 Forsyth St., S.W. Atlanta, GA 30303-8960	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digital signature applied by EPA Award Official Shantel Shelmon - Grants Management Officer			<b>DATE</b> 09/01/2023

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$500,000	\$500,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$500,000	\$500,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(3) & 104(k)(5)(E) & 104(k)(10)(B)(iii) & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$5,000
4. Equipment	\$0
5. Supplies	\$1,000
6. Contractual	\$38,400
7. Construction	\$455,600
8. Other	\$0
9. Total Direct Charges	\$500,000
10. Indirect Costs: 0.00 % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$500,000
12. Total Approved Assistance Amount	\$500,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$500,000
15. Total EPA Amount Awarded To Date	\$500,000

## **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-1-2022-or-later>.

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

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

### **A. Correspondence Condition**

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

- Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) and Jasmine Williams, [williams.jasmine@epa.gov](mailto:williams.jasmine@epa.gov), or 404-562-9334.
- MBE/WBE reports (EPA Form 5700-52A): Jasmine Williams, [williams.jasmine@epa.gov](mailto:williams.jasmine@epa.gov), or 404-562-9334.
- 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: Brain Gross, [gross.brian@epa.gov](mailto:gross.brian@epa.gov) or 404-562-8604 and Jasmine Williams, [williams.jasmine@epa.gov](mailto:williams.jasmine@epa.gov), or 404-562-9334.
- Payment requests (if applicable): Brain Gross, [gross.brian@epa.gov](mailto:gross.brian@epa.gov) or 404-562-8604 and Jasmine Williams, [williams.jasmine@epa.gov](mailto:williams.jasmine@epa.gov), or 404-562-9334.
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Brain Gross, [gross.brian@epa.gov](mailto:gross.brian@epa.gov) or 404-562-8604.

### **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 07/01/2023 to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

## **Programmatic Conditions**

# **FY23 Brownfields Cleanup Cooperative Agreement**

# Infrastructure Investment and Jobs Act Funds

## Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Cleanup

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

#### 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 2023 (FY23) competition for Brownfield Cleanup cooperative agreements. EPA's approval of the FY23 application indicates that the CAR is in compliance with the Site Characterization requirement (as outlined in Section III.B.9. of the FY23 Cleanup Grant Guidelines) and has provided information to EPA that demonstrates that a sufficient level of site characterization from environmental site assessments have been performed for the remediation work to begin on the site(s) subject to this agreement.
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 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 § 276c); 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). For more detailed information on complying with Davis-Bacon, please see the Davis-Bacon Addendum to these 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 OWNERSHIP/RECIPIENT ELIGIBILITY REQUIREMENTS

### A. Site Ownership

1. The CAR may only clean up the site(s) it solely owns that is specified in the workplan for this cooperative agreement. The CAR must retain ownership of the site(s) while Brownfield Cleanup 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(s). For the purposes of this agreement, the term "owns" means fee simple title unless the EPA previously approved a different ownership arrangement.

### B. Continuing Obligations for CARs

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA § 107. 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.

#### C. Site Substitution and Cleanup Method Changes

1. The CAR must use funds provided by this agreement to clean up the brownfield site(s) in the EPA-approved workplan. The CAR shall not substitute a different brownfield site.
2. The CAR shall not make substantial changes to the cleanup method described in the workplan, including changes to the expected cleanup based on public comment or other reasons, without prior EPA approval.

### 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 30 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:

an appropriate remediation plan is in place, institutional control development (if necessary) has commenced;  
initial community engagement activities have taken place;  
relevant state or tribal pre-cleanup requirements are being addressed;  
a Qualified Environmental Professional has been procured; and  
a solicitation for remediation services has been issued.

Sufficient progress at 30 months is indicated when:

at least 50% of the site-specific activities have been completed and funds have been requested by and disbursed to the CAR;  
a Quality Assurance Project Plan has been approved by EPA; and  
other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

## 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. 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:

- e. 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.

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

g. 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.

h. 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.)

i. 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. The EPA Project Officer will provide waivers to provisions a. – d. 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 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. 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.

2. 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 cleanup activities at a given site.

3. 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.

6. 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. 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).

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 using the Cleaning Quarterly Report function or to the EPA Project Officer. Quarterly performance reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Cleanup 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 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); and total remaining funds. The budget summary table must include costs that are charged to the “other” budget object class category (e.g., 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[1] among direct budget categories or programs, functions and activities that occurred during the quarter and cumulatively during the period of performance.

f. For local governments that are using cooperative agreement funds for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where 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. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to clean up the specific property(ies) under this cooperative agreement.
4. In accordance with 2 CFR § 200.329(e)(1), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

#### E. Property Profile Submission

1. The CAR must report on interim progress (e.g., clean up started) and any final accomplishments (e.g., clean up completed, 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. Cost Share Requirement

1. As provided in IIJA, no cost share is required for this agreement.

### B. 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 necessary to clean up sites. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Ensuring cleanup activities at a particular site are authorized by CERCLA § 104(k) and the EPA-approved workplan.
- b. Ensuring that a cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. 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.

d. Using up to \$50,0000 of the cooperative agreement funds to conduct unforeseen environmental site assessment activities only when:

i. the state or tribal environmental authority requires additional site characterization in order to move forward with the remediation, as provided at CERCLA § 104(k)(10)(B)(i)(I); or

the site is not enrolled in the State or Tribal response program and the Environmental Professional recommends, in writing, additional site characterization in order to move forward with the remediation, as provided at CERCLA § 104(k)(10)(B)(i)(I); and

ii. the CAR has exhausted available resources to conduct the environmental site assessment, including the resources described in the FY23 application.

The CAR must obtain written approval from the EPA Project Officer to use funding from this cooperative agreement to characterize the site.

e. 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>.

f. Performing limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.

g. 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.

h. Establishing an Administrative Record.

g. Using a portion of the cooperative agreement funds to purchase environmental insurance for the 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*.]

j. 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 cleanup activities.

2. **Local Governments Only** – If authorized in the EPA-approved workplan and budget narrative, up to 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted and is contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

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 **\$25,000**. 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.

#### C. 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. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;

b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;

c. Construction, demolition, and site development activities that are not 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);

d. Job training activities unrelated to performing a specific 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 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. CLEANUP REQUIREMENTS

### A. Authorized Cleanup Activities

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCAs), 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 (e.g., sea level rise, 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.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the 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.

## B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), 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.
2. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 30 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (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 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.

The QAPP should be prepared in accordance with [EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans](#). No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

3. The recipient shall notify the EPA Project Officer and the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) when substantive changes are needed to the QAPP. EPA may require the QAPP be updated and re-submitted for approval.
4. The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the EPA Project Officer and the QAM at least annually and may also be submitted when changes occur (the QAM or EPA Project Officer may add additional specifications).
5. The recipient must submit a QAPP Checklist with the QAPP. The QAPP Checklist can be found online at: <https://www.epa.gov/brownfields/region-4-quality-assurance-project-plan-qapp-tool-box>.

6. **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 [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm) 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 City of Marion 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. 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.

#### F. 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.

#### G. Completion of Cleanup Activities

1. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanup is complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

#### H. 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 cleanups supported with Cleanup 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 the site(s) 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.

[\[1\]](#) Per EPA's General Term and Condition, 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.