



Contract Number: RED14001 Version: 1 Desc: RED BrwnFldsSLCRDA/Ogden/SLCo
Supplier Name: SALT LAKE CITY CORPORATION
Comments: RED/ORD/CRD - EXI Exempt (Interlocal) - Coalition formed: Salt Lake County/Redevelopment of Salt Lake City/Ogden City, and this agreement is to clarify responsibilities of each party. The Environmental Protection Agency awarded Salt Lake County an initial Grant amount \$1,000,000. Funding will be used to make loans and subgrants to eligible recipients - to clean up eligible Wasatch Brownfields sites with Revolving Loan Funds, and to conduct other activities to prudently manage the revolving loan fund. Those loans will be made under separate agreements. TERM upon execution of all parties=10-01-2014 to 12-31-2019, may Amend for 2-additional 5-year terms - MAX 12-31-2029 in no event shall agreement exceed 50 years.. [see agreement Attachments A= BJ11905C; B= EPA Agr,; C= Wasatch Brownfields RLF Policies&Procedures]
Contract Amount: \$1.00
Agency Name: Redevelopment Agency Of SL Co
Period Performance from 10/1/2014 to 12/31/2019
Procurement Type: EXI Exempt (Interlocal) Reason Code:
Buyer: Plverson

SLCCVRWOS_V1

INTERLOCAL COOPERATION AGREEMENT

between

**SALT LAKE COUNTY, OGDEN CITY, and
THE REDEVELOPMENT AGENCY OF SALT LAKE CITY**

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is entered into between each of **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah ("County"), **OGDEN CITY**, a Utah municipality ("City"), and **THE REDEVELOPMENT AGENCY OF SALT LAKE CITY**, a community development and renewal agency and political subdivision of the State of Utah ("RDA"). The County, City and RDA may collectively be referred to hereinafter as "the Parties," "Coalition," or "Coalition Members."

RECITALS:

A. The Parties are "public agencies" as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the "Cooperation Act"), and, as such, are authorized by the Cooperation Act to enter into this Agreement to act jointly and cooperatively on the basis of mutual advantage.

B. The Parties entered into an interlocal cooperation agreement dated November 28, 2011 attached hereto as **ATTACHMENT A**, wherein the Parties formally agreed to act together as a coalition of eligible governmental entities to submit a proposal to the U.S. Environmental Protection Agency ("EPA") for a grant to capitalize a brownfields revolving loan fund.

C. On September 5, 2012, the EPA awarded the County an initial grant in the amount of one million dollars (\$1,000,000). According to the terms of the Cooperative Agreement entered into with the EPA, a copy of which is attached hereto as **ATTACHMENT B**, the grant provides funding for the County and its Coalition Partners to capitalize the Wasatch Brownfields Revolving Loan Fund (the "Wasatch Brownfields RLF") from which to make loans and subgrants to eligible recipients to cleanup eligible brownfields sites, and to conduct other necessary activities to prudently manage the RLF.

D. The Cooperative Agreement contains a 20% cost share requirement and also provides that the Coalition will initially utilize the \$1 million grant to help facilitate the cleanup and redevelopment of eight priority sites identified in the Coalition's grant application and other potential sites within Salt Lake County or Ogden City.

E. The Parties now desire to enter into this Agreement to adopt certain policies and procedures by which the Coalition will manage the Wasatch Brownfields RLF and administer the initial \$1,000,000 grant award and any supplemental EPA funding awarded to the Coalition in the future.

A G R E E M E N T:

NOW THEREFORE, in exchange for and in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and legal adequacy of which is hereby acknowledged, the Parties agree as follows:

1 . WASATCH BROWNFIELDS RLF MANAGEMENT.

A. The Coalition Members shall manage the Wasatch Brownfields RLF in the manner prescribed by the policies and procedures attached hereto as **ATTACHMENT C** (the "Policies and Procedures").

B. The Coalition Members shall appoint the initial members of the Wasatch Brownfields RLF Board in accordance with the attached Policies and Procedures prior to September 30, 2014 (the "Initial Board Appointment Deadline"). Any Board positions that remain unfilled on the Initial Board Appointment Deadline shall be appointed by the County.

C. The County shall appoint the RLF Manager in accordance with the attached Policies and Procedures prior to September 30, 2014.

D. The Parties shall comply with the terms and conditions of the Cooperative Agreement, and the City and RDA shall, at the County's request, assist the County with any of its responsibilities under the Cooperative Agreement, including reporting requirements, project analysis, and accessing and securing cleanup sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant.

2 . GENERAL PROVISIONS:

A. Interlocal Cooperation Act. In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

(i) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with Section 11-13-202.5 of the Cooperation Act.

(ii) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act.

(iii) The term of this Agreement shall not exceed fifty (50) years pursuant to

Section 11-13-216 of the Cooperation Act.

(iv) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

(v) No separate legal entity is created by the terms of this Agreement and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties under this Agreement.

(vi) Pursuant to Section 11-13-207 of the Cooperation Act, the Wasatch Brownfields Coalition Board Members designated by the County, the City, and the RDA from time to time, in accordance with the terms of the attached Policies and Procedures, shall serve as the joint administrative board for all purposes of the Cooperation Act.

B. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be deemed sufficient if given by a written communication and shall be deemed to have been received upon personal delivery, actual receipt, or within three (3) days after such notice is deposited in the United States mail, postage prepaid, and certified and addressed to the Parties as set forth below:

Salt Lake County	Ogden City	Salt Lake City RDA
Emily Farmer Regional ED Manager 2001 S. State Street, S2-100 Salt Lake City, Utah 84190	Brandon Cooper CED Deputy Manager 2549 Washington Blvd, Suite 110 Ogden City, UT 84401	Matthew Dahl Senior Project Manager 451 S. State Street, Room 418 Salt Lake City, UT 84111

C. Term of the Agreement. This agreement shall be effective upon execution by all Parties and shall continue through December 31, 2019 (the "Initial Term"). At the conclusion of the Initial Term, the Parties shall have the option to extend the Agreement for two (2) additional five-year terms, upon the same terms and conditions set forth in this Agreement. This option to extend the Agreement shall be exercised upon any Party providing written notice to the other Parties at least thirty (30) days prior to the expiration of the Initial Term, and upon all Parties signing a letter indicating the extension of the Agreement prior to expiration of the Initial Term.

D. Agency. No agent, employee, or servant of one Party is or shall be deemed to be an agent, employee, or servant of the other Parties. None of the benefits provided by one Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other Parties. The Parties shall each be solely and entirely responsible for their own acts and for the acts of their respective agents, employees, and servants during the performance of this Agreement.

E. Indemnification.

(i) The City and RDA agree to indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third parties, including the City or RDA, their subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, the City's or RDA's breach of this Agreement or any acts or omissions of or by the City or RDA, their agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement.

(ii) The County and RDA agree to indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third parties, including the County or RDA, their subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, the County's or RDA's breach of this Agreement or any acts or omissions of or by the County or RDA, their agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement.

(iii) The County and City agree to indemnify, hold harmless, and defend the RDA, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third parties, including the County or City, their subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, the County's or City's breach of this Agreement or any acts or omissions of or by the County or City, their agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement.

F. Governmental Immunity. The Parties are governmental entities under the Governmental Immunity Act of Utah, §§ 63G-7-101, *et seq.* (1953, as amended) (the "Immunity Act"). Nothing contained in this Agreement shall be construed in any way to modify the limits of liability set forth in that Act or the basis for liability as established in the Act. Nothing contained in this Agreement shall be construed as a waiver by any Party of any defenses or limits of liability available under the Immunity Act and other applicable law. The Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

G. No Officer or Employee Interest. It is understood and agreed that no officer or employee of any Party has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement.

H. Default. If either party defaults in the performance of the Agreement, or any of its covenants, terms, conditions or provisions, the defaulting party shall pay all costs and

expenses, not including attorneys fees, which may arise or accrue to the non-defaulting party from enforcing the Agreement.

I. No Limitation of Rights. The rights and remedies of the Parties hereto are in addition to any other rights and remedies provided by law or under this Agreement. The Parties agree that the waiver of any breach of this Agreement by any Party shall in no event constitute a waiver as to any future breach.

J. Compliance with Laws. The Parties shall comply with all applicable statutes, laws, rules, regulations, licenses, certificates and authorizations of any governmental body or authority in the performance of its obligations under this Agreement.

K. Records. Financial records, supporting documents, statistical records and all other records pertinent to this Agreement must be kept readily available for review by County from time to time upon County's request. Such records must be retained and maintained for a minimum of three (3) years after the end of a budget period. If question still remain, such as those raised as a result of an audit, records must be retained until completion or resolution of any audit in process or pending resolution. Such records are subject to the Utah Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 *et seq.* (1953, as amended).

L. Assignment and Transfer. The Parties may not assign or transfer their respective duties of performance nor their rights under this Agreement.

M. Time. The parties stipulate that time is of the essence in the performance of this Agreement.

N. Entire Agreement. This Agreement and the attached Policies and Procedures constitutes the entire Agreement between the Parties, and no statements, promises, or inducements made by either party, or agents for either party, that are not contained in this written Agreement and the attached Policies and Procedures shall be binding or valid. This Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties; and the attached Policies and Procedures may not be enlarged, modified or altered, except in the manner set forth in the Policies and Procedures.

O. Severability. The Parties agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be void, voidable, unenforceable, or invalid, prohibited or unenforceable under applicable law, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.

P. Governing Law. It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of Salt Lake County, both as to interpretation and performance. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County of Salt Lake, State of Utah.

Q. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

R. Warrant of Signing Authority. The person or persons signing this Agreement on behalf of each Coalition Member warrants his or her authority to do so and to bind the Coalition Member.

[Intentionally Left Blank - Signature Pages Follow]

IN WITNESS WHEREOF, the Parties execute this Agreement.

Contract RED14001
Salt Lake County

SALT LAKE COUNTY:

By Nichole Dunn
Mayor Ben McAdams or Designee

Dated: September 25, 2014

Approved as to Form and Legality:

**SALT LAKE COUNTY
DISTRICT ATTORNEY:**

By Stephen Barnes
Deputy District Attorney
Stephen Barnes

Dated: September 25, 2014

REDEVELOPMENT AGENCY OF SALT LAKE CITY:

By [Signature]
Mayor Ralph Becker
Chief Administrative Officer

By [Signature]
D.J. Baxtor
Executive Director

Dated: 10/6, 2014

Dated: 10/1, 2014

STATE OF UTAH)
:SS
County of Salt Lake

On this 6 day of October, 2014, personally appeared before me **Ralph Becker**, who being duly sworn, did say that he is the **Chief Administrative Officer of the Redevelopment Agency of Salt Lake City**, and that the foregoing instrument was signed on behalf of the Redevelopment Agency of Salt Lake City, by authority of law.

[Signature]
NOTARY PUBLIC
Residing in Salt Lake County

Salt Lake County

My Commission Expires:
12/17/17



STATE OF UTAH)
:SS
County of Salt Lake

On this 1st day of October, 2014, personally appeared before me **D.J. Baxtor**, who being duly sworn, did say that he is the **Executive Director of the Redevelopment Agency of Salt Lake City**, and that the foregoing instrument was signed on behalf of the Redevelopment Agency of Salt Lake City, by authority of law.

[Signature]
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:
4/17/17



Approved as to Form and Legality:
ATTORNEY FOR
THE SALT LAKE CITY RDA

By [Signature]
Dawn Geomelas
Dated: September 29, 2014

ATTACHMENT A 10 Contract RED14001
Salt Lake County

Interlocal Cooperation Agreement dated November 28, 2011
BJ11905C

INTERLOCAL AGREEMENT

among

**SALT LAKE COUNTY
OGDEN CITY
and
THE REDEVELOPMENT AGENCY,
OF SALT LAKE CITY**

This Interlocal Cooperation Agreement ("Agreement") is effective on the 28 day of November, 2011 among Salt Lake County, a political subdivision of the State of Utah; Ogden City, a municipality and a political subdivision of the State of Utah; and the Redevelopment Agency of Salt Lake City, a community development and renewal agency and a political subdivision of the State of Utah ("RDA"). Salt Lake County, Ogden City, and RDA are sometimes jointly referred to hereinafter as the "Parties" or "Coalition" or "Coalition Members."

WITNESSETH:

WHEREAS, the Parties, acting together as a coalition of eligible governmental entities, intend to submit a proposal to the U.S. Environmental Protection Agency ("EPA") for a Brownfields Revolving Loan Fund ("RLF") grant; and

WHEREAS, the RLF grant will capitalize a revolving loan fund to make loans and provide subgrants to conduct cleanup activities at eligible Brownfields sites; and

WHEREAS, the Parties are public entities and are, therefore, authorized by the Utah Interlocal Cooperation Act, Utah Code Ann. §11-13-201 *et seq.*, as amended, to enter into agreements to cooperate with each other in a manner that will enable them to make the most

efficient use of their resources and powers, and to exchange services that they are each authorized by statute to provide; and

WHEREAS, the Parties desire to enter into an interlocal agreement to accomplish the foregoing purposes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this agreement, the mutual benefits to the parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. Coalition Members

The Coalition Members are “local government” units as defined in 40 CFR Part 31.3.

1.1 Salt Lake County is a county of the first class as defined in Utah Code Ann. § 17-50-501 and may perform the services, exercise the powers, and perform the functions provided for in Utah Code Ann. § 17-50-302.

1.2 Ogden City is a municipality and political subdivision of the State of Utah pursuant to Utah Code Ann. § 10-1-201, and may perform the services, exercise the powers, and perform the functions provided for in Utah Code Ann. § 10-1-202.

1.3 The RDA is a community development and renewal agency created by an ordinance adopted by the Salt Lake City Council and is a separate body corporate and politic created under Utah Code Ann. § 17C-1-201 and is a political subdivision of the State of Utah pursuant to Utah Code Ann. § 17C-1-102(3). The RDA may perform the services, exercise the powers, and perform the functions provided for in Utah Code Ann. § 17C-1-202.

2. Threshold Criteria

2.1 Eligible Entities. As is more fully described in Section 1, the Coalition Members

are units of local government organized and existing under the laws of the State of Utah.

2.2 Jurisdiction. Salt Lake County has general jurisdiction within the unincorporated areas within the geographic boundaries of the County. In addition, the Salt Lake Valley Health Department ("SLVHD") operates as a Division of the Salt Lake County Department of Human Services. The SLVHD has jurisdiction in both the incorporated and unincorporated areas of the County pursuant to Utah Code Ann. §26A-1-114, for all public health and environmental regulatory matters. The RDA has jurisdiction for the purposes described in Utah Code Ann. §17C-1-202 within the incorporated geographic boundaries of Salt Lake City. Ogden City has jurisdiction for the municipal purposes described in Utah Code Ann. §10-1-202 within the incorporated geographic boundaries of Ogden City.

2.3 Environmental Authority. A letter from the Utah Department of Environmental Quality ("DEQ") acknowledging that the Coalition plans to apply for federal grant funds to establish a revolving loan fund and conduct cleanup activities will be submitted in support of the Coalition's proposal.

2.4 Oversight Structure and Legal Authority. Loan or subgrant recipients will be required to enroll in the Utah Division of Environmental Response and Remediation ("DERR") Voluntary Cleanup Program described in Utah Code Ann. §19-8-101 *et seq.*, to ensure that cleanups are protective of human health and the environment. The Coalition Members will submit legal opinions in support of their proposal demonstrating: (a) legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant; and (b) legal authority to perform the actions necessary to manage a RLF.

2.5 Cost Share. Each Coalition Member shall be responsible for the grant program's 20% cost share requirement, and apportionment of ultimate responsibility for the payment of

such cost share requirement will be agreed to prior to the issuance of a subgrant or loan.

2.6 Retention of Grant Writing Consultant. Each Coalition Member agrees to contribute \$5,000.00 to retain the services of a grant writing consultant.

3. Brownfields RLF Grant Coalition Elements.

3.1. The designated representatives of the Parties are specifically identified in Section 7 herein.

3.2. Salt Lake County is responsible to EPA for management of the Coalition and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that the Parties, as Coalition Members, are in compliance with the RLF grant requirements.

3.3. Salt Lake County is responsible for the provision of timely information to the other Parties as Coalition Members regarding the management of the Coalition and any changes that may need to be made to the Agreement over the period of performance.

3.4. Activities funded through the RLF may include the direct costs associated with the cleanup of eligible Brownfields sites and eligible programmatic costs for managing the RLF, and other eligible activities as may be agreed to by the Coalition Members. Consistent with section 3.5 below, Salt Lake County may retain consultant(s) and contractors to undertake various activities funded through the Coalition agreement and may, with majority approval by the Coalition Members, award subgrants to any one or more of the Parties for cleanup activities in their geographic areas.

3.5. Salt Lake County will procure consultant(s) as necessary to implement the RLF grant. Salt Lake County will issue Requests for Proposals or Requests for Qualifications and will be the entity responsible for receipt of the submitted proposals. The selection of the

consultant(s) shall be made by a majority of the Coalition Members. Salt Lake County will then be responsible for the award of the consultant contract(s).

3.6. Salt Lake County, in consultation with the Parties as Coalition Members, will work to develop a site selection process based upon mutually agreed factors. Potential cleanup sites may be awarded subgrants or loans for eligible Brownfields sites.

3.7. Salt Lake County will be responsible to work with the Coalition Member(s) in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of such Coalition Member(s) to obtain all required permits, easements, and/or access agreements as may be necessary to undertake a cleanup at the selected site. If the Coalition Member(s) does not have the capacity to perform these activities, Salt Lake County may assist in securing necessary site access agreement and permits.

3.8. Salt Lake County is responsible for ensuring that the Coalition Members submit quarterly project reports to the EPA and updating the ACRES database for projects that are funded by the RLF and located within the Coalition Member's jurisdiction.

4. Term

This agreement shall have a term that is the later of either the expiration of the Coalition's obligations to the EPA or the termination of the RLF.

5. Government Records Access Management Act

The Parties recognize that they are subject to the Utah Government Records Access Management Act ("GRAMA"), Utah Code Ann. §63G-2-101 *et seq.* as amended, and that the Parties shall not disclose records or documents classified as "private, controlled or protected" to third parties without complying with the provisions of GRAMA. The Parties may share non-public records in compliance with GRAMA, Utah Code Ann. §63G-2-206, as amended.

6. Governmental Immunity

The Parties acknowledge that they are governmental entities subject to the Utah Governmental Immunity Act ("Act"), Utah Code Ann. §63G-7-101 *et seq.*, as amended. By entering into this Agreement, the Parties do not waive any defenses or limits of liability under the Act or any defense provided by common law. Each party shall retain liability and responsibility for the acts and omissions of their representative officers and employees. In no event shall this Agreement be construed to establish a partnership, joint venture, or other similar relationship between the Parties, and nothing contained herein shall authorize the Parties to act as agents for each other. Each of the Parties hereto assumes full responsibility for the negligent operations, acts, and omissions of its own employees, agents, and contractors. It is not the intent of the Parties to incur by contract or otherwise any liability for the negligent operations, acts or omissions of the other parties or their agents, employees or contractors. Nothing in this Agreement shall be construed as an assumption of any duty for the benefit of any third party.

7. Coalition Representatives

7.1 Consistent with the requirements of Utah Code Ann. §11-13-207, as amended, the Parties as Coalition Members designate the following representatives to administer this Agreement:

Salt Lake County

Emily Farmer
2001 South State Street, Suite S2100
Salt Lake City, Utah 84190
801-468-2280
efarmer@slco.org

Ogden City

Brandon Cooper
2549 Washington Blvd., Suite 420
Ogden, Utah 84401
801-629-8947
brandoncooper@ci.ogden.ut.us

RDA

Matthew Dahl
P. O. Box 145518
Salt Lake City, Utah 84114-5518
801-535-7239
matthew.dahl@slcgov.com

7.2 Communications concerning this Agreement shall be directed through the designated representatives or their designees.

8. No Interlocal Entity Created

The Parties do not intend to, and do not in fact, create an interlocal entity by entering into this Agreement.

9. Review and Approval

Pursuant to the Interlocal Cooperation Act, Utah Code Ann. §11-13-202.5, this agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party.

10. Keeper of Records

Pursuant to the Interlocal Cooperation Act, Utah Code Ann. §11-13-209, a duly executed original counterpart of this agreement shall be filed with the keeper of records of each party.

11. Costs

Except as otherwise specifically provided herein, each Party shall be responsible for its own costs related to any action taken pursuant to this Agreement, and for any financing of such costs.

12. Disposition of Property

To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other real property management or transactions.

13. Termination

A Party may terminate this Agreement prior to the expiration of the primary term, with or without cause, by giving advance written notice to the other Parties' project representatives of the desired termination date.

14. Consideration

The Parties agree that the covenants, obligations, and payments provided for herein are sufficient consideration to support the respective obligations under this Agreement.

15. Assignment

It is understood and agreed that the Parties will not assign or transfer their respective obligations under this Agreement without the prior written approval of the other Coalition Members.

16. Severability

If any provision hereof is found to be illegal, invalid, or unenforceable for any reason, such finding shall not affect the other provisions hereof.

17. Entire Agreement

This agreement contains the entire agreement of the Parties, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid. This Agreement may not be enlarged, modified, or altered except in writing, signed by the Parties.

18. Laws of Utah and Venue

It is understood and agreed that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance. The venue for any and all legal actions

arising hereunder shall lie in the Third District Court in and for the County of Salt Lake, State of Utah.

19. Attorneys' Fees and Costs

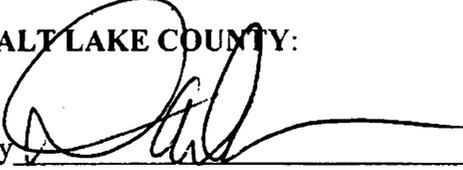
In the event of legal action, arbitration, alternative dispute resolution, or other proceeding brought for the enforcement or resolution of any of the terms of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

20. Representation and Warranty Regarding Ethical Standards

The Parties will comply with the provisions of the Utah Public Officers and Employees Ethics Act § 67-16-1 *et seq.* and § 10-3-1301 *et seq.*, Utah Code Ann. The Parties each jointly and individually represent and warrant that neither they, nor their current or former members, managers, employees, officers, directors, or any other of their agents have: (1) provided an illegal gift or payoff to an RDA officer or employee or former RDA officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the Salt Lake City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that they will not knowingly influence, an RDA officer or employee or former RDA officer or employee to breach any of the ethical standards set forth in Salt Lake City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

21. Counterparts

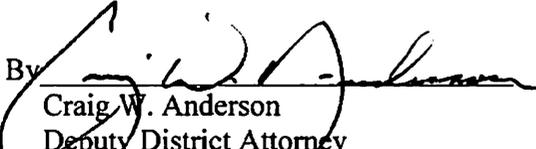
This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all Parties, notwithstanding that each of the Parties are not a signatory to the original or the same counterpart.

SALT LAKE COUNTY:
By 

Mayor Peter Corroon or Designee

Approved as to Form and legality:

SALT LAKE COUNTY
DISTRICT ATTORNEY

By 

Craig W. Anderson
Deputy District Attorney

Dated: Nov 21, 2011
I1:sharechristewordC30an

REDEVELOPMENT AGENCY OF
SALT LAKE CITY

By [Signature]
Mayor Ralph Becker
Its Chief Administrative Officer

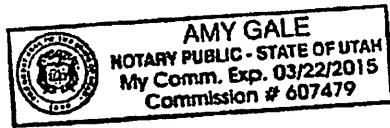
By [Signature]
D.J. Baxter
Its Executive Director

STATE OF UTAH)
 :ss
County of Salt Lake)

On this 22 day of November, 2011, personally appeared before me **Ralph Becker**, who being duly sworn, did say that he is the Chief Administrative Officer of the Redevelopment Agency of Salt Lake City, and that the foregoing instrument was signed on behalf of the Redevelopment Agency of Salt Lake City, by authority of law.

[Signature]
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:
3/22/15



STATE OF UTAH)
 :ss
County of Salt Lake)

On this 22 day of November, 2011, personally appeared before me **D.J. Baxter**, who being duly sworn, did say that he is the Executive Director of the Redevelopment Agency of Salt Lake City, and that the foregoing instrument was signed on behalf of the Redevelopment Agency of Salt Lake City, by authority of law.

[Signature]
NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:
4/17/13



Approved as to Form and legality:

SALT LAKE CITY ATTORNEY

By [Signature]
Damon Georgelas
Senior City Attorney

Dated: November 22nd, 2011



SALT LAKE COUNTY

COUNTY COUNCIL

November 8, 2011

Max Burdick, Chair
District #6

Randy Horiuchi
At-Large A

Richard Snelgrove
At-Large B

Jim Bradley
At-Large C

Arlyn Bradshaw
District #1

Michael H. Jensen
District #2

David A. Wilde
District #3

Jani Iwamoto
District #4

Steven L. DeBry
District #5

CORRECTION LETTER

Ms. Patricia Iverson
Contracts Administrator
Contracts & Procurement Division
Rm. N4500, Government Center
Salt Lake City, Utah 84190

Dear Ms. Iverson:

The Salt Lake County Council, at its meeting held this day, approved the attached RESOLUTION NO. 4579 authorizing execution of an INTERLOCAL AGREEMENT between Salt Lake County, **Ogden City**, and the **Redevelopment Agency of Salt Lake City** – Formation of a Coalition to Submit a Proposal to the U.S. Environmental Protection Agency for a Brownfields Revolving Loan Fund Grant.

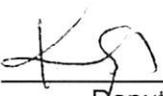
Salt Lake County will form a coalition with Ogden City and the Redevelopment Agency of Salt Lake City to submit a proposal to the U.S. Environmental Protection Agency for a Brownfields Revolving Loan Fund (RLF) grant. This grant will capitalize a revolving loan fund to make loans and provide sub-grants to conduct cleanup activities at eligible Brownfields sites. The collation members will each contribute \$5,000 to retain the services of a consultant to write the grant application.

Pursuant to the above action, you are hereby authorized to effect the same.

Respectfully yours,

SALT LAKE COUNTY COUNCIL

SHERRIE SWENSEN, COUNTY CLERK

By 
Deputy Clerk

ks

pc: Auditor
Emily Farmer/Redevelopment Agency



SALT LAKE
COUNTY

Contract Number: BJ11905C	
Vendor Name: SALT LAKE CITY CORPORATION REDEVELOPMENT AGENCY OF SALT LAKE	
Description: FORMATION OF COALITION TO SUBMIT PROPOSAL TO US ENVIRONMENTAL PROTECTION AGENCY FOR A BROWNFIELDS REVOLVING LOAN FUND GRANT RLF WITH OGDEN CITY & REDEVELOPMENT AGENCY OF SALT LAKE CITY AND WITH SALT LAKE COUNTY. THE GRANT IS FOR CLEANUP ACTIVITIES AT BROWNFIELDS SITES. COALITION MEMBERS WILL CONTRIBUTE \$5,000 EACH TO RETAIN SERVICES OF A CONSULTANT TO WRITE THE GRANT APPLICATION. TERM IS THE LATTER OF EITHER THE EXPIRATION OF THE COALITIONS OBLIGATIONS TO THE EPA OR THE TERMINATION OF THE RLF.	
Contract Amount: \$1.00	⓪ Not To Exceed Ⓛ Estimated Amount
Authorized Dept.: ¹¹⁰ 100 2050 931 2930 HD10	
Period Performance from 11/28/11 to 11/27/16	
Renewal Option:	TERM IS THE LATTER OF EITHER THE EXPIRATION OF THE COALITIONS OBLIGATIONS TO THE EPA OR THE TERMINATION OF THE RLF.
Selection Process: Interlocal Cooperative Act pursuant to County Ordinance 3.16.100	

ATTACHMENT B TO Contract RED14001
Salt Lake County
EPA Cooperative Agreement

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 96809501 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/05/2012
		TYPE OF ACTION New	MAILING DATE 09/12/2012
		PAYMENT METHOD: ACH	ACH# 80414
		RECIPIENT TYPE: County	
RECIPIENT: Salt Lake County 2001 South State Street, Suite S2100 Salt Lake City, UT 84190-1020 EIN: 87-6000316		PAYEE: Salt Lake County 2001 South State Street, Suite S2100 Salt Lake City, UT 84190-1020	
PROJECT MANAGER Emily Farmer 2001 South State Street, Suite S2100 Salt Lake City, UT 84190-1020 E-Mail: efarmer@slco.org Phone: (385) 468-4868	EPA PROJECT OFFICER Christina Wilson 1595 Wynkoop Street Denver, CO 80202-1129 E-Mail: wilson.christina@epa.gov Phone: 303-312-6706	EPA GRANT SPECIALIST Sarah Hulstein Grants, Audit and Procurement, 8TMS-G E-Mail: Hulstein.Sarah@epa.gov Phone: 303-312-6014	
PROJECT TITLE AND DESCRIPTION Brownfields Assessment & Cleanup Cooperative Agreements This project provides funding for Salt Lake County and its Coalition members to capitalize a RLF from which to make loans and subgrants to cleanup brownfields site(s), and conduct other necessary activities to prudently manage the RLF. The Wasatch Front Brownfields Coalition ("Coalition") – which is made up of Salt Lake County, the Redevelopment Agency of Salt Lake City, and Ogden City – will initially utilize the \$1,000,000 awarded to help facilitate the cleanup and redevelopment of 8 priority sites (covering 294 acres) that have been identified as environmentally contaminated. To address the significant problem of contaminated properties and health concerns along the Wasatch Front, the Coalition was formed to focus on the cleanup of critical sites that are linked to each other by one or more modes of public transit.			
BUDGET PERIOD 09/01/2012 - 09/30/2017	PROJECT PERIOD 09/01/2012 - 09/30/2017	TOTAL BUDGET PERIOD COST \$1,200,000.00	TOTAL PROJECT PERIOD COST \$1,200,000.00
NOTICE OF AWARD			
Based on your application dated 08/03/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$1,000,000. EPA agrees to cost-share 80.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,000,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129		ORGANIZATION / ADDRESS U.S. EPA, Region 8 Ecosystems Protection & Remediation 1595 Wynkoop Street Denver, CO 80202-1129	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Wayne Anthofer - Director			DATE 09/05/2012
AFFIRMATION OF AWARD			
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION			
SIGNATURE 	TYPED NAME AND TITLE Nicole Dunn, Deputy Mayor		DATE 9/17/12

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,000,000	\$ 1,000,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 200,000	\$ 200,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 1,200,000	\$ 1,200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1208LBF040	12	E4	08L0AG7	301D79	4114	G800OL00		500,000
-	1208LBF040	12	E4	08L0AG7	301D79XBP	4114	G800OS00		500,000
									1,000,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$53,250
2. Fringe Benefits	\$13,312
3. Travel	\$8,600
4. Equipment	\$0
5. Supplies	\$3,000
6. Contractual	\$261,838
7. Construction	\$0
8. Other	\$860,000
9. Total Direct Charges	\$1,200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>20.00</u> % Federal <u>80.00</u> %.)	\$1,200,000
12. Total Approved Assistance Amount	\$1,000,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,000,000
15. Total EPA Amount Awarded To Date	\$1,000,000

Administrative Conditions

1. **Payment to consultants.** EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2012, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

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

2. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

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

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **ENTER NAME OF ENTITY WHOSE GOAL IS BEING ADOPTED** as follows:

MBE: CONSTRUCTION ___; SUPPLIES ___; SERVICES ___; EQUIPMENT ___
 WBE: CONSTRUCTION ___; SUPPLIES ___; SERVICES ___; EQUIPMENT ___

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **ENTER NAME OF ENTITY WHOSE GOAL IS BEING ADOPTED**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the

recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

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

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

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

- (a) Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient

receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **annually** for the period ending September 30th for:

40 CFR Part 30 Recipients (Non-profits and Institutions of Higher Education); and
40 CFR Part 35 Subpart A and Subpart B Recipients.

The reports are due within 30 days of the end of the annual reporting period (October 30th). Reports should be sent to ENTER APPROPRIATE REGIONAL INFORMATION. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

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

3.

1. The recipient will comply with the following: (1) all applicable provisions of 40 CFR Parts 29, 31, 34, and 35 (if applicable), OMB Circulars A-102, A-133 and 2 CFR, Part 225 and (2) any terms and conditions set forth in this assistance agreement or assistance amendment.

2. The Project Work Plan is the work plan for this award. Performance will be evaluated consistent with the Policy on Performance Based Assistance dated May 31, 1985.

3. The recipient agrees to ensure that all requisitions for conference, meeting, convention, or training space funded in whole or in part with Federal funds comply with the Hotel and Motel Fire Safety Act of 1990.

4. FEDERAL FINANCIAL REPORTS (FFR)

A) Final Federal Financial Reports

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a Final Federal Financial Report – also called the FFR or SF425 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Please note that these reports are required by EPA grant regulations (see 40 Code of Federal Regulations §31.41.(2)). Completed SF425s must be faxed to 702-798-2423 or mailed to the following address: US EPA, Las Vegas Finance Center, 4220 S. Maryland Pkwy., Bldg. C, Rm 503, Las

Vegas, NV 89119. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a Final Federal Financial Report.

B) Closeout

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

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)
- Minority/Women's Business Enterprise Utilization (MBE/WBE) Report (EPA Form 5700-52A)

R8grants@epa.gov or

**Grants, Audit and Procurement Program Office (8TMS-G)
1595 Wynkoop Street
Denver, CO 80202-1129**

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

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

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

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

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

8. **National Term and Condition:**
Drug-Free Workplace Certification for all EPA recipients

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2>.

9. a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

10. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses

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

11. EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

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

13. In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

14. 1. Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

15. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

- i. You must report each obligating action described in paragraph

a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance

subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. subawards,

and

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this

award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. *Salary and bonus* .

ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified* .

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

16. Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11).

4. This award and the resulting federal funding share, 80% as shown under "Notice of Award" above is based on estimated costs requested in the application. While actual total costs may be different than those estimates, the recipient may not provides less than 20% of the final total allowable program/project costs (outlays).
5. Allowable Preaward Cost are approved in the amount of \$745.

Programmatic Conditions

Revolving Loan Fund (RLF) Terms and Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. **Cooperative Agreement Recipients:** By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 competition for Brownfields RLF cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.
2. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.
4. Information submitted to EPA under this cooperative agreement may be subject to the Freedom of Information Act (FOIA). EPA recommends that recipients do not provide confidential business information ("CBI") to the Agency. However, if confidential business information is included, it will be treated in accordance with 40 CFR 2.203. Recipients must clearly indicate which portion(s) of the information submitted to EPA the recipient claims as CBI. EPA will evaluate such claims in accordance with 40 CFR Part 2. If no claim of confidentiality is made, EPA is not required to make the inquiry to the recipient otherwise required by 40 CFR 2.204(c)(2) prior to disclosure. Unless otherwise required by Federal, State, or local law, the CAR and its borrowers and subgrantees are not required to permit public access to their own records. 40 C.F.R. 30.53; 40 C.F.R. 31.42. See 40 C.F.R. part 2 for EPA's general information-disclosure procedures.

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs

under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines for Brownfields Revolving Loan Fund Grants* dated September 2011 for discussion of this element) documenting that:
 - a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
 - b. the State determines there is "no viable responsible party" for the site;
 - c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
 - d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

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

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subgrant Recipient Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

2. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**
3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**
4. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.
5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
6. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.
7. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.
8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

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

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:
 - a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.
 - b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through:
 - (a) any direct or indirect familial relationship; or
 - (b) any contractual, corporate, or financial relationships; or
 - (c) a reorganized business entity that was potentially liable or otherwise liable

under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

- c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
 - iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
 - v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B)].
- d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.
2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under

§107 of CERCLA for that site.

- c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
- d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
- e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
- b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.
- c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the Program and for coordinating the team's activities as outlined below.
2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subgrant agreements prior to execution.
5. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

D. Quarterly Progress Reports

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

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

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

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

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

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.
 - a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at brownfields sites.
 - b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to \$200,000 per site). (Note: when implemented as a policy change, the CAR may request a waiver to the 50% cap on subgrant funds. Please consult with your Regional Project Officer.)
 - c. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
 - ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is

- located because of the small population or low income of the community;
- iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and
 - iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:
 - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k);
 - b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
 - c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;
 - d. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;
 - e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;
 - f. Establishing an administrative record for each site;
 - g. Developing a Quality Assurance Project Plan (QAPP) as required by Part 31 and Part 30 regulations. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;
 - h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;
 - i. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;
 - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.
 - k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and
 - l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrant Recipients

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.

- b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
 - c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.
 - d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
 - e. To pay for a penalty or fine.
 - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
 - g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
 - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR and subgrantees.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
 - b. Ineligible grant or subgrant administration costs include direct costs for:
 - i. Preparation of applications for Brownfields grants and subgrants;
 - ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
 - iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
 - iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
 - v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
 - vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
 - vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
 - viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.
 - ix. Borrowers are subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees from using loans financed with cooperative agreement funds for administrative costs.
 - c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.
 - d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

- i. Preparation of applications for loans and loan agreements;
 - ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - iii. Maintaining and operating financial management and personnel systems;
 - iv. Preparing payment requests and handling payments; and
 - v. Audits.
- e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:
- i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.
 - iv. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
 - v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

4. Cooperative agreement funds may not be used for any of the following properties:

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

5. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

D. Use of Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
2. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of

loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

3. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.
4. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.
5. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

E. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
2. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.
3. Interest earned on program income is considered additional program income.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The alternatives may – as national or regional policies direct - additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

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

F. Completion of RLF Cleanup Activities

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

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

CAN CHANGE - Here we have written with the "R9 model" of workplan negotiation, where the RLF recipient submits a broad, general RLF workplan and follows up with a specific and detailed RLF implementation plan. Regions may adapt this to reflect their preferred method of negotiating RLF's.

2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible

costs until an RLF grant workplan. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

- a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.
- b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
- c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.
- d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
- e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
- f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
- g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

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

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:
 - a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.
 - b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).
 - d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.
 - e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
 - f. Borrowers or subgrant recipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for

petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

- g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.
- h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.
- i. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions that are recipients of subgrants.
- j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions. (*EPA Project Officer to attach appropriate Davis-Bacon term and condition to this particular grant.*)
- k. Federal cross-cutting requirements include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
 - a. The affected party,
 - b. Any member of his immediate family,
 - c. His or her partner, or
 - d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

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

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subgrant recipient; "disbursement" is the transfer of funds from the CAR to the borrower or subgrant recipient. "Close out" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR. §31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA. A waiver from this requirement may be granted by EPA after a written request is submitted that adequately justifies drawing down cooperative agreement funds prior to accrued program income.

B. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower by means of 'actual expense' or 'schedule.'
If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.
 - a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant/loan recipient's payment of costs incurred in carrying out the subgrant/loan. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.
 - c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.
 - d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

C. Schedule for Closeout

1. There are two fundamental criteria for closeout:
 - a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and
 - b. Completion of all cleanup activities funded by the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.
3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.
4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA § 107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

E. Final Requirements

1. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.
 - a. The CAR must submit the following documentation:
 1. The Final Report as described in II.F.
 2. A Final Federal Financial Report (FFR - SF425). Submitted to:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
<http://www.epa.gov/ocfo/linservices/payinfo.html>
 3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.
 - b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA § 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

G. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms & conditions apply:
 - a. The CAR shall:
 - i. document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
 - ii. maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
 - iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k) and applicable Federal and State laws and will protect human health and the environment.
 - b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower or subgrant recipient (See Section on Methods of Disbursement). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the assistance agreement as required by 40 CFR 31.20(b)(7) and 31.21(c). If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 40 CFR 31.21(i).
 - c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:
 - i. the recipient cannot retain the funds;
 - ii. the recipient does not have access to the escrow funds on demand;
 - iii. the funds remain in escrow unless there is a default of a guaranteed loan;
 - iv. the organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
 - v. there must be an agreement with financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrant recipient.
 - d. Federal Obligation to the Loan Guarantee Program
 - i. Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrant recipient.
 - e. Repayment of Guaranteed Loans
 - i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA. Alternatively, the CAR may, with EPA approval,

- 1) Guarantee additional loans under the terms and conditions of the agreement or,
- 2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities.

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

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

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

1. Applicability of the Davis Bacon Prevailing Wage Requirements.

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

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

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

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

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

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

Note: If an RLF Recipient encounters a unique situation at a petroleum or hazardous substance site that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before advising a borrower or subgrantee that DB does not apply.

2. Obtaining Wage Determinations.

(a) The RLF Recipient is responsible for obtaining DB wage determinations from DOL and ensuring the borrowers and subgrantees include the correct wage determinations in solicitations for competitive contracts by way of requests for bids, proposals, quotes or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments).

(b) Unless otherwise instructed by EPA on a project specific basis, the RLF Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. RLF Recipients must obtain wage determinations for specific localities at www.wdol.gov.

- (i) For solicitations, new contracts and ordering instruments for the excavation and removal of hazardous substances, construction of caps, barriers and similar activities the RLF Recipient shall use the "Heavy Construction" Classification.
- (ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment, and abatement or contamination in buildings (other than residential structures less than 4 stories in height) the RLF Recipient shall use "Building Construction" classification.
- (iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient shall use "Residential Construction" classification.
- (iv) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Building Construction" classification.
- (v) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Heavy Construction" classification.

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

(b) RLF Recipients shall include a term and condition in all loans and subgrants which ensures that the borrower or subgrantee complies with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The RLF Recipient must ensure that prime contracts entered into by borrowers and subgrantees contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the borrower or subgrantee's solicitation remains open, the RLF Recipient shall require that the borrower or subgrantee monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The RLF Recipient shall require that the borrower or subgrantee 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 RLF Recipient may, on behalf of the borrower or subgrantee, 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 RLF Recipient.
- (ii) If the borrower or subgrantee 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 RLF Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The RLF Recipient shall ensure that borrowers and subgrantees monitor www.wdol.gov on a weekly basis if the borrower or subgrantee does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current. If the applicable wage determination changes, the RLF Recipient shall provide the borrower or subgrantee with the current wage determination from www.wdol.gov.

- (iii) If the borrower or subgrantee 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 RLF Recipient shall ensure that the borrower or subgrantee inserts the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) RLF Recipients shall ensure that borrowers and subgrantees 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 borrower or subgrantee's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the borrower or subgrantee 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 RLF Recipient shall require that the borrower or subgrantee 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 RLF Recipient must ensure that the borrower or subgrantee compensates the contractor for any increases in wages resulting from the use of DOL's revised wage determination. RLF Recipients may, but are not required to, provide additional loan or subgrant funds to the borrower or subgrantee for this purpose.

3. Contract and Subcontract Provisions

(a) The RLF Recipient shall ensure that borrowers and subgrantees 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 RLF Recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate

and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. RLF Recipients shall require that the contractor and subcontractors include the name of the RLF Recipient employee or official responsible for monitoring compliance with DB on the poster.

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the RLF Recipient and the borrower or subgrantee 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 RLF Recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

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

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

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

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

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

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

(B) Each payroll submitted to the RLF Recipient shall be accompanied by a "Statement of Compliance,"

signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, **Recipient, borrower or subgrantee**, 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 RLF Recipient, borrower or subgrantee and EPA*, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

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

(a) Contract Work Hours and Safety Standards Act. ***The RLF Recipient shall ensure that subgrantees and borrowers*** 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 CFF [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 therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (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 RLF Recipient shall upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the borrower or subgrantee, 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 RLF Recipient 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 RLF Recipient 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

Note: RLF Recipients may require that borrowers or subgrantees verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. RLF Recipients must ensure that borrowers and subgrantees understand the compliance verification requirements and can interpret prevailing wage determinations properly before placing the responsibility for compliance verification on borrowers or subgrantees. Moreover, the RLF Recipient remains accountable to EPA for ensuring that the borrowers' and subgrantees' contractors and subcontractors comply with DB.

(a). The RLF Recipient periodically interview, or require that borrowers or subgrantees interview, a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The RLF Recipient 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 RLF Recipient shall establish and follow, or ensure that borrowers or subgrantees 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 RLF Recipient, or the borrower or subgrantee, 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. RLF Recipients, or borrowers or subgrantees, 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. RLF Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a borrower or subgrantee. All interviews shall be conducted in confidence.

(c). The RLF Recipient shall conduct, or require that borrowers or subgrantees 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 RLF Recipient shall establish and follow or ensure that borrowers or subgrantees follow a spot check schedule based on an assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient must spot check, or require that borrowers or subgrantees 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 of the contract or subcontract. RLF Recipients must conduct, or require that borrowers or subgrantees 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 RLF Recipient shall verify, or require that borrower or subgrantees verify, evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The RLF Recipient shall periodically review, or require that borrowers or subgrantees 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) RLF Recipients must immediately report, or require that borrowers or subgrantees immediately report, potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm> .

7. Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event.
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

ATTACHMENT C To Contract RED14001
Salt Lake County

Wasatch Brownfields RLF Policies and Procedures

WASATCH BROWNFIELDS COALITION

**POLICIES AND PROCEDURES
FOR EPA BROWNFIELDS REVOLVING LOAN FUND**

Table of Contents

1. RLF MANAGEMENT AND ADMINISTRATION.....	4
1.1. Overview.....	4
1.1.1. Coalition Board.....	4
1.1.2. EPA Involvement.....	5
1.1.3. RLF Manager.....	5
1.1.4. Qualified Environmental Professional (QEP), UDEQ, and LHDs.....	5
1.2. Coalition Board – Structure and Duties.....	5
1.2.1. Structure.....	5
1.2.2. Duties.....	5
1.2.3. Additional Duties.....	6
1.2.4. Appointment.....	6
1.2.5. Chairperson.....	6
1.2.6. Vice Chair.....	6
1.2.7. Term.....	6
1.2.8. Removal.....	6
1.3. Board Meetings.....	7
1.3.1. Procedure.....	7
1.3.2. Attendance.....	7
1.3.3. Conduct of Meetings.....	7
1.3.4. Voting.....	7
1.4. RLF Manager – Duties and Appointment.....	8
1.4.1. Duties.....	8
1.4.2. Appointment.....	8
1.5. Qualified Environmental Professional (QEP).....	8
1.5.1. Utah Department of Environmental Quality (DEQ).....	8
1.5.2. Salt Lake Valley and Weber-Morgan Health Departments.....	8
1.5.3. QEP Consultants.....	8
1.5.4. Other Parties.....	9
2. LOANS AND SUBGRANTS.....	9
2.1. General Application Process.....	9
2.2. Restrictions on Loan Amounts.....	9
2.3. Subgrants.....	10
2.4. Conflict of Interest.....	10
2.5. Confidentiality.....	10
3. SITE SELECTION PREFERENCE.....	11
4. ELIGIBILITY REQUIREMENTS.....	11
5. COST-SHARE CONTRIBUTION.....	11
6. LOAN APPLICATION REQUIREMENTS.....	12
6.1. Preparation.....	12
6.2. Remediation Planning.....	12
6.3. Cleanup Plans.....	12
6.4. Time Restraint on Cleanup.....	12
6.5. Contractor Selection.....	12
7. RLF MANAGER’S REPORT/ANALYSIS.....	13
8. LOAN UNDERWRITING CRITERIA & CREDIT ANALYSIS.....	13
8.1. Applicant Character.....	13
8.2. Applicant Credit Report.....	14

8.3.	Applicant Financial Strength	14
8.4.	Applicant Cash Flow	14
9.	COLLATERAL ANALYSIS	14
9.1.	Lien Searches	14
9.2.	Collateral Valuation	15
10.	REPAYMENT ANALYSIS	15
10.1.	Primary Source of Repayment	15
10.2.	Secondary Source of Repayment	15
11.	LOAN/SUBGRANT APPLICATION REVIEW PROCESS	15
11.1.	Application Review	15
11.2.	Approval	15
11.3.	Denial	15
12.	LOAN STRUCTURE	16
12.1.	Rate	16
12.2.	Repayment Terms	17
12.3.	Amortization	17
12.4.	Payments and Late Fees	17
12.5.	Collateral	17
12.6.	Subordination	18
12.7.	Exceptions	18
13.	LOAN/GRANT CLOSING / FEES / COSTS	18
13.1.	Application Fee	18
13.2.	Origination Fee	18
13.3.	Monthly Service Fee	19
13.4.	Cost Share	19
14.	LOAN SERVICING POLICIES	19
14.1.	Payments	19
14.2.	Monitoring	19
14.3.	Special Considerations	20
14.4.	Delinquency Policy	20
14.5.	Loan Workouts and/or Restructuring	20
14.6.	Foreclosure Policies	21
15.	POLICY DEVIATIONS	21
16.	AMENDMENTS	21
17.	ETHICAL CONDUCT	22
APPENDIX A	23	
APPENDIX B	29	

Wasatch Brownfields Coalition
SALT LAKE COUNTY
2001 South State Street, Suite S-2100
PO Box 144575
Salt Lake City, Utah 84114-4575
(385) 468-4868

POLICIES AND PROCEDURES FOR EPA BROWNFIELDS REVOLVING LOAN FUND

PARTIES

These Policies and Procedures apply to Salt Lake County (the “County”), Ogden City (the “City), and the Redevelopment Agency of Salt Lake City (the “RDA”) in the management of a grant-funded revolving loan fund. The County, City, and RDA may collectively be referred to hereinafter as the “Wasatch Brownfields Coalition,” “Coalition,” or the “Coalition Partners.”

BACKGROUND

In 2012, the County entered into a Cooperative Agreement with the U.S. Environmental Protection Agency (the “EPA”) for an initial grant of \$1 million to capitalize the Wasatch Brownfields Coalition Revolving Loan Fund (the “WBC RLF” or “RLF”). The purpose of the WBC RLF is to facilitate the reuse and redevelopment of environmentally contaminated sites by awarding low-interest loans and/or small subgrants to eligible property owners to fund environmental cleanup at eligible sites.

The Coalition Partners desire to operate the RLF in an organized, effective, and efficient manner and have developed these Policies and Procedures to achieve that goal. Accordingly, the Coalition Partners agree that the following Policies and Procedures shall govern the RLF Program:

1. RLF MANAGEMENT AND ADMINISTRATION

1.1. Overview

Generally speaking, the Coalition is responsible for establishing a team to implement the RLF Program and managing their activities. The following organizations or individuals are key players in the administration of the RLF Program: the Coalition Board, the EPA, the RLF Manager, and the Qualified Environmental Professional (QEP).

1.1.1. Coalition Board.

The Coalition Board shall review applications for RLF funding on behalf of the Coalition Partners and shall, subject to these Policies and Procedures and County policies and procedures, award loans or subgrants to eligible “Borrowers” or “Subgrant Recipients” for eligible environmental cleanup projects at eligible sites. The Coalition Board shall also manage the RLF

Program and may from time to time make changes to these Policies and Procedures. The Coalition Board is discussed more fully in Section 1.2.

1.1.2. EPA Involvement.

The EPA is substantially involved in overseeing and monitoring the RLF Program through review and approval of procedures for loan and subgrant recipient selection; review of project phases, and approval of substantive terms included in professional services contracts. Substantial EPA involvement also includes making brownfields property-specific funding determinations. For instance, the Coalition may request technical assistance from the EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in Section 104(k)(4)(B)(i)(IV) of CERCLA applies (this prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under Section 107 of CERCLA for that site). Substantial EPA involvement may also include reviewing financial and environmental status reports; monitoring all reporting, record-keeping, and other program requirements; as well as the review of substantive terms of RLF Loans and cleanup subgrants.

1.1.3. RLF Manager.

The RLF Manager is responsible for carrying out responsibilities that relate to the financial management of the RLF Program. Nevertheless, the County remains accountable to EPA for the proper expenditure of funds provided to the County under the Cooperative Agreement with the EPA. The RLF Manager is discussed more fully in Section 1.4.

1.1.4. Qualified Environmental Professional (QEP), UDEQ, and LHDs.

The QEP is responsible for coordinating, directing, and overseeing the brownfields cleanup activities at a particular site. The Utah Department of Environmental Quality (UDEQ) will take on the QEP role for many projects by providing general oversight of cleanups through the required enrollment of RLF cleanup projects into a UDEQ oversight program. Local health departments (LHDs) will also help the Coalition evaluate proposed projects, review cleanup progress and results, and generally oversee cleanup projects. Salt Lake County may also engage a consultant to serve as the QEP on an as-needed basis. As part of the loan application process, UDEQ and/or another QEP will assist in reviewing loan and subgrant applications to ensure site eligibility and appropriate use of funds. However, as mentioned above, the EPA ultimately determines site eligibility. The QEP role is discussed more fully in Section 1.5.

1.2. Coalition Board – Structure and Duties

1.2.1. Structure

The Coalition Board (the “Board”) shall have seven voting members. Each Coalition Partner shall appoint two representatives to the Board and the County, in addition to its two representatives, shall appoint the Chairperson.

1.2.2. Duties.

The primary duties of the Board are to review loan and subgrant applications in order to make informed lending and granting decisions and to make operational and policy decisions pertaining

to the RLF Program. The Board shall determine, after input from the Coalition Partners and their staff, issues such as loan rates, payment schedules and fees, Borrower and Subgrant Recipient eligibility and approval requirements, and the overall approach to and management of the RLF Program.

1.2.3. Additional Duties.

Board members shall perform such other duties and functions as may be required from time to time by the Coalition to effectively administer the RLF Program.

1.2.4. Appointment.

Board members representing the County shall be appointed by the County Mayor. Board members representing City shall be appointed by the City Mayor. Board members representing the RDA shall be appointed by the Executive Director of the RDA. The appointment of individuals to the Board shall be formalized with a written letter to the other two Coalition Partners. These appointment letters shall be maintained in the records of each Coalition Partner.

1.2.5. Chairperson.

The Chair of the Board shall be appointed by the County Mayor. The Chair shall preside at all board meetings and perform such other duties as may be assigned to him from time to time by the Board. Prior to any board meeting, the Chair shall, in consultation with other Board members, approve agenda items organized and prepared by the RLF Manager (defined below) or his/her Designee. If the office of Chair becomes vacant, the County Mayor will appoint a successor before the next regularly scheduled meeting of the Board.

1.2.6. Vice Chair.

The Vice Chair shall be elected from among the board members by a majority vote at a regularly scheduled meeting of the Board. The Vice Chair shall, at the request of the Chair, or in the event the Chair is absent or unable to act, perform the duties of the Chair, and when so acting shall have all of the powers of the Chair, with the exception that the Vice Chair shall not vote in the Chair's stead. The Vice Chair shall assist the Chair and perform such duties as may be assigned to him from time to time by the Chair or the Board.

1.2.7. Term.

Each board member, including the Chair, will serve a four-year term, which may be renewed at the end of the term by the then current Mayor or Executive Director, as applicable.

1.2.8. Removal.

The Board may convene a meeting at any time to discuss and vote on whether to remove a particular board member from the Board. A board member may be removed from the Board for just cause and upon majority vote of all other board members. Just cause includes unexcused absence from regularly scheduled board meetings, unethical behavior, and the like. The vacancy created by the removal of a board member shall be filled as soon as practicable by the same Coalition Partner that appointed the removed board member.

1.3. Board Meetings

1.3.1. Procedure.

The Chair may call a meeting of the Board for the purpose of transacting business and for the intent of making decisions at any time the Chair deems necessary or proper. Any board member may request that the Chair call and hold a meeting at any time. A minimum of one board meeting shall take place annually, but the Board may meet as often as the Chair deems appropriate. The Chair shall determine the location and time of board meetings.

The Board's decisions at a board meeting pertaining to approving or denying any project funding or other expenditure must be recorded in writing in the official meeting minutes and must also be supported in writing with the Board's reasoning.

1.3.2. Attendance.

Board members are expected to attend all regularly scheduled board meetings in person, by telephone, or via live video conferencing. If a Board member is unable to attend a meeting, the Board member's absence is excused if the Board member notifies the Chair and the RLF Manager in advance. A sudden illness or emergency, upon reasonable notification, is an excused absence.

1.3.3. Conduct of Meetings.

At meetings of the Board, the order of business will follow a written agenda provided by County staff to all members via email before the meeting. County staff will take minutes at the meeting. The County staff will ensure that the minutes are sent to Board members via email within 10 business days of the Board meeting. A Board member may contest the minutes by notifying the Chair in writing within 10 business days of receiving the minutes and outlining the Board member's reason for contesting the minutes. If a Board member does not contest the minutes within 10 business days of receiving them, the Board member is deemed to have approved the minutes.

1.3.4. Voting.

The Board may vote on decisions under consideration only if a quorum is present. A quorum consists of at least four board members, three of which must have been appointed by different Coalition Partners, not including the Chair. A Board member must be present either in person, by telephone, or via live video conferencing to be counted in the quorum. If a Board member anticipates that he/she will be absent from the meeting, the Board member must notify the RLF Manager and the Chair in advance. The Mayor or Executive Director Officer of each Coalition Partner, as applicable, may appoint a substitute for a board member to participate in the meeting and vote in the board member's stead.

If a quorum cannot reach a unanimous decision, a simple majority vote by attending Board members, including attendance by electronic means, such as telephone or live video conferencing, decides the issue. If a vote results in a tie, the Chair's vote decides the issue. If a vote results in a tie and the Chair is absent or unable to act, the issue is not decided and may be reconsidered at a meeting where the Chair is present. Board members may vote by acclamation or by ballot, as the Chair may designate.

1.4. RLF Manager – Duties and Appointment

1.4.1. Duties.

Subject to the direction and supervision of the Board, the RLF Manager shall supervise the day-to-day operations of the RLF Program and shall perform all other duties as may be assigned to him/her from time to time by the Board. Specifically, the RLF Manager is responsible for administering the budget, servicing loans, compiling and analyzing loan applications, overseeing remediation, and complying with EPA reporting requirements. The RLF Manager also coordinates community outreach efforts, tracks technical data and outcomes, monitors site cleanup activities, and insures that work is moving forward in a manner acceptable to the Board. The RLF Manager may delegate any of these responsibilities to employees of any Coalition Partner (“Coalition Employees”).

1.4.2. Appointment.

The RLF Manager shall be appointed by the Mayor of the County and must be an employee of the Salt Lake County Office of Regional Development. Once appointed, the RLF Manager shall serve until resignation or until removal by the Mayor of the County. The County’s appointment of the RLF Manager shall be formalized with a written letter to the other two Coalition Partners.

1.5. Qualified Environmental Professional (QEP)

1.5.1. Utah Department of Environmental Quality (DEQ).

UDEQ will serve as the Qualified Environmental Professional (QEP) for most projects. Since RLF cleanup projects will be required to enroll in a UDEQ-administered program, such as the Voluntary Cleanup Program (VCP), UDEQ will provide much of the oversight needed for individual projects. At the planning stage, UDEQ will assist in reviewing loan applications to evaluate each proposed project’s potential to improve health, safety, and environmental conditions.

1.5.2. Salt Lake Valley and Weber-Morgan Health Departments.

Salt Lake Valley Health Department (for projects within Salt Lake County) and Weber-Morgan Health Department (for projects within Ogden City) will assist the Coalition in compiling data; evaluating each proposed project’s potential to improve health, safety, and environmental conditions; reviewing progress and results of cleanups at the regular stakeholder meetings; coordinating quarterly meetings with UDEQ officials to ensure project compliance; taking action on public health impacts identified in the corrective action plan; and generally overseeing certain types of environmental cleanup projects.

1.5.3. QEP Consultants.

There may be occasions where UDEQ is unable to serve as the QEP on a cleanup project due to workload, conflicts of interest, or other factors. In these circumstances, professional environmental consulting services will be required to assist with reviews, recommend changes to

proposed project scopes, verify completion of remediation projects, and provide technical advice and other resources and assistance necessary to administer the RLF. The County shall retain these QEP consultants on an as-needed contract basis through an established competitive procurement process.

1.5.4. Other Parties.

This Section does not contain an exhaustive list of all the duties or parties associated with administration of the RLF Program. There are others who may perform certain duties related to the administration of the RLF Program such as attorneys and accounting personnel affiliated with each of the Coalition Partners.

2. LOANS AND SUBGRANTS

2.1. General Application Process.

The RLF Manager shall advertise the availability of loans and/or subgrants from the WBF RLF Program to be used for environmental remediation projects within Salt Lake County and Ogden City and provide applications to all interested individuals. The RLF Manager shall follow the advertising and marketing requirements set forth by the EPA from time to time.

Applicants shall submit loan or subgrant applications to the RLF as instructed in the application. Once received, the RLF Manager shall send the site eligibility analysis to UDEQ and/or EPA for approval, whichever is required.

The RLF Manager, together with Coalition Employees, shall analyze the applications, conduct due diligence, and compile the analysis and due diligence into a report to be presented to the Board.

The application review process may include, but is not limited to:

- client interviews;
- technical/financial analysis;
- collateral analysis;
- credit reports and credit checks; and
- document verification and analysis.

The Board shall review the RLF Manager's report and make the final decision to approve or deny the application at a meeting of the Board at which a quorum is present. The Board may deny an application based on fund availability, the ability to secure funds in the RLF, feasibility of a successful cleanup or another standard that is consistent with these Policies and Procedures. The Board may include details, provisions, restrictions, and covenants in addition to those required by these policies and procedures in any decision approving a loan or subgrant application.

2.2. Restrictions on Loan Amounts

Subject to funding availability, the maximum loan amount for any one borrower is \$500,000 per site. However, the Board may determine to loan a greater amount under unique circumstances. The minimum loan amount for one borrower is \$10,000 per site. However, the Board may determine to loan a lesser amount under unique circumstances. In no event, however, shall the loan amount,

when combined with prior debt secured by the collateral, exceed 95% of the appraised value of the collateral (the “95% loan-to-value requirement”).

2.3. Subgrants

Subgrants are discouraged but will be considered on a case-by-case basis. In no event shall subgrants exceed the amount specified in the EPA Cooperative Agreement. Subgrants may not be awarded to for-profit organizations.

In the event the Board determines to use RLF funds to issue subgrants, the Board shall designate a specified amount to use for subgrants which shall be divided evenly among the Coalition Partners. However, any Coalition Partner may waive his right to its share of the subgrant designated funds by submitting a written waiver signed by the Mayor or Executive Director of the Coalition Partner. Furthermore, such subgrant-designated funds shall be converted to loan-designated funds if they remain unused and are at risk of forfeiture to the EPA.

2.4. Conflict of Interest

Each Board member must disclose in writing to the County and the Board any business, personal, or financial interest the Board member has with any loan or subgrant applicant. If a conflict of interest exists, the conflicted Board member must identify the conflict and recuse himself/herself from any Board action involving the issue giving rise to the conflict.

If the Chair has a conflict, the Vice Chair will assume the Chair’s duties, other than voting, on any issues giving rise to the conflict. If the Chair and Vice Chair both have a conflict, the remaining Board members shall appoint a Substitute Chair by majority vote at the beginning of the meeting. The Substitute Chair assumes the Chair’s duties, other than voting, on any issues giving rise to the conflict. The Substitute Chair must be an existing Board member.

If a vote results in a tie and the Chair is unable to vote due to a conflict of interest, the County Mayor shall appoint a substitute to vote in the Chair’s stead. The substitute votes in the Chair’s stead for only the issue causing the Chair’s conflict.

If a Board member refuses to acknowledge a conflict of interest or refuses to recuse himself/herself despite a conflict of interest, the Board may, using its normal voting procedures, force that Board member to recuse himself/herself from any Board action involving the issue that created the conflict.

2.5. Confidentiality

The Board is responsible for protecting applicant confidentiality. To achieve this, the Board and RLF Manager shall limit access to applicant information to appropriate staff and Board members. Loan and subgrant application documents and analysis reports that are distributed to the Board before meetings shall be treated as confidential.

When the Board completes its review of an application and report, the County must retain one copy of all applications, supporting documents, and reports for recordkeeping and statistical tracking purposes according to retention schedules established by the County from time to time. The other Coalition Partners may, at their discretion, retain copies of all applications, supporting documents, and reports. The Coalition may release to the public information regarding the loan portfolio’s general performance, but generally will not disclose to the public individual loan performance.

Notwithstanding the foregoing, the Coalition Partners are subject to the Utah Government Records Access and Management Act (GRAMA), Utah Code Ann. §§ 63G-2-101 to -901. As a result, the Coalition Partners may be required to disclose certain information and materials to the public upon request. Generally, any document submitted to the Coalition is considered a “public record” under GRAMA. Any person who provides to the Coalition a record that the person believes is protected under subsection 63G-2-305(1) or (2) must provide both: (1) a written claim of business confidentiality and (2) a concise statement of reasons supporting the claim of business confidentiality.

3. SITE SELECTION PREFERENCE

The Board shall approve funding for one project in each Coalition Partner’s jurisdiction before it may approve a second project in any Coalition Partner’s jurisdiction. A member of the Coalition may waive its right to this priority status in writing presented to the Board by both representatives from the jurisdiction. For purposes of this Section, the County’s jurisdiction does not include the jurisdiction of the RDA and vice versa. After the Board has approved the first three applications—one from each Coalition Partner’s jurisdiction— or after a jurisdiction has waived its right to this initial priority status, the Board shall no longer be required to approve applications evenly among the Coalition Partners.

4. ELIGIBILITY REQUIREMENTS

The Coalition may not award any loans or subgrants to an ineligible applicant or for an ineligible property or ineligible cleanup activity. Eligibility requirements for applicants, properties, and cleanup-activities are listed in **Appendix A**. However, the eligibility requirements listed in the Cooperative Agreement or the EPA Revolving Loan Fund Administrative Manual shall govern to the extent they differ from those listed in Appendix A. Furthermore, according to the Cooperative Agreement, the EPA must review each application to confirm site eligibility.

5. COST-SHARE CONTRIBUTION

Under the Cooperative Agreement, the Coalition must make a 20% cost share contribution to the RLF Program (contribute an amount equal to at least 20% of the amount of the grant award). The cost share contribution may be made in the form of cash, labor, material, or services from a non-federal source. The cost share contribution must be for costs that are eligible and allowable under the Cooperative Agreement and must be supported by adequate documentation.

The Coalition Partners may satisfy the entire 20% cost share requirement from their own funds or may require Borrowers and Subgrant Recipients to assist with this requirement. For instance, for each loan or subgrant, the Board shall determine whether to require the Borrower or Subgrant Recipient to contribute toward the 20% cost share requirement. Generally, the Board will require the Borrower or Subgrant Recipient to assume all or part of the cost-share contribution. The Board will determine the amount of the Borrower’s or Subgrant Recipient’s contribution and how the Borrower or Subgrant Recipient may make the contribution. The standard method to ensure that the Borrower or Subgrant Recipient meets its cost-share obligation is to loan or subgrant only a percentage of total eligible cleanup costs.

6. LOAN APPLICATION REQUIREMENTS

6.1. Preparation.

The RLF Manager shall prepare an application package for prospective applicants. The application package should generally require applicants to provide the information listed in **Appendix B**. Nevertheless, the RLF Manager shall have flexibility to decide on the required documentation for each applicant. The RLF Manager shall maintain a project file and shall keep a permanent record of application materials, including pictures, letters from past property owners, and documentation of other relevant information.

The Salt Lake County District Attorney's Office shall prepare the loan agreement, promissory note, and related documents.

All loan and subgrant applications must include a "true-to-the-best-of-my-knowledge" statement acknowledged by the Borrower or Subgrant Recipient. The Board and the Coalition Partners shall require each Borrower or Subgrant Recipient to agree to indemnify the Board and the Coalition Partners from liability associated with remediation of the approved site.

6.2. Remediation Planning.

The RLF Manager and the Board will review each loan or subgrant application to ensure that the Borrower will use funds for cleanup activities necessary to attain site closure or to allow for redevelopment of the property.

The RLF Manager and the QEP will review information that the applicant submits to comply with this section. If the RLF Manager or the QEP identifies a deficiency, the applicant must resolve all deficiencies to facilitate a loan or subgrant agreement with the Coalition.

6.3. Cleanup Plans.

Each applicant is responsible for submitting a cleanup plan, all required permits, and other required plans to UDEQ, the local health department, or other applicable regulatory agencies. The appropriate regulatory agency must approve the cleanup plan, before an applicant may receive a loan or subgrant. The applicant must submit a copy of the approved cleanup plan and a letter of regulatory agency approval as part of its application. If the applicant does not submit these documents, the final loan or subgrant agreement must define what is required and when it must be submitted to receive funding.

6.4. Time Restraint on Cleanup.

For each approved project, the Board, in consultation with UDEQ or the Coalition's QEP, will determine an appropriate deadline by which cleanup must be completed.

6.5. Contractor Selection.

Each applicant shall agree to follow all EPA requirements, including the Six Good Faith Efforts discussed in the Cooperative Agreement, whenever procuring construction, equipment, services and

supplies, and shall agree to retain records documenting compliance with all requirements. The Board may reject an applicant's application if the applicant refuses to agree to these requirements.

7. RLF MANAGER'S REPORT/ANALYSIS

The RLF Manager is responsible for receiving and compiling loan and subgrant applications. Together with Coalition Employees, the RLF Manager shall compile the applications into a package to be presented to the Coalition Board. The RLF Manager and Coalition Employees may work in coordination with the Coalition Partner of the jurisdictional boundary in which the prospective site is located including the delegation of responsibilities to analyze and compile loan and subgrant applications.

The RLF Manager shall compile a report to be presented to the Board. The intent is to provide the Board with a thorough and accurate summary of the loan or subgrant application. The report shall identify, quantify, and assess each applicant's strengths and weaknesses.

The report from the RLF Manager and Coalition Partner must present sufficient detail, supported by credible financial summaries and analysis, to allow the Board to make a reasoned decision concerning approving or denying an applicant's request for funding. The Board may request that the RLF Manager and applicable Coalition Partner provide actual loan or subgrant application documents for the Board's review.

The process is not based solely on risk analysis (why a loan should or should not be made), but also on risk management (how the risks can be managed). Typical information that could be provided in a report to the Board might include:

- description of public benefit
- applicant information;
- description of eligibility issues;
- requested loan amount;
- analysis of management ability;
- financial analysis of business;
- balance sheet analysis;
- income statement analysis;
- cash flow analysis;
- analysis of owner's personal living needs;
- collateral analysis;
- owner's equity position; and
- a summary and recommendation.

A copy of the Borrower's (and/or Guarantor's) credit report should be attached to the report, if applicable.

8. LOAN UNDERWRITING CRITERIA & CREDIT ANALYSIS

8.1. Applicant Character

An applicant must be creditworthy to qualify for funding under the Coalition's RLF Program. A personal financial statement and business financial statement may be required as part of the

application process. The financial statement(s) will be compared directly to the credit report for accuracy. Any misrepresentation by the applicant is reason for immediately denying the application.

8.2. Applicant Credit Report

The RLF Manager shall obtain a Credit Report as part of the due diligence process. The Credit Report must be current and obtained no earlier than 45 days before the date of the Board meeting at which final approval or denial will be determined. The following standards have been established for interpretation of credit reports:

Late payments: The applicant must provide a written statement for the cause of all late payments.

Bankruptcy: Applicants must not have declared bankruptcy within the last three years unless such bankruptcy is strictly related to a medical catastrophe or an act-of-nature occurrence beyond the applicant's control (e.g. natural disaster).

Collections: There can be no outstanding collections except those deemed medically related. For any outstanding medical collection, the applicant must have a workout plan completed.

Judgments: There can be no outstanding judgments.

Whenever an adverse credit report is received on an applicant, principal, or other party (such as a spouse or former spouse), the applicant must provide a written narrative describing the circumstances giving rise to any adverse credit factors noted and the current status or final outcome.

8.3. Applicant Financial Strength

The RLF Manager shall evaluate the financial strength of each applicant based on, but not limited to, the following factors:

- Repayment ability, including past earnings, projected cash flow, and future prospects
- Sufficient invested equity to operate on a sound financial basis
- Potential for long-term success based on the business plan
- Effect any affiliates may have on the ultimate repayment ability of the applicant
- Liquidity
- Nature and value of collateral

8.4. Applicant Cash Flow

Applicants must demonstrate an ability to generate positive free cash flow. An applicant's Debt Service Coverage (Free Cash Flow/Debt Service Obligation ratio) should be 1.5 or better.

9. COLLATERAL ANALYSIS

Typical collateral review includes lien searches and valuation.

9.1. Lien Searches

The RLF Manager will complete a lien search on each potential item of collateral. This information will be presented to the Board and will assist the Board in determining the Borrower's collateral position. The lien search must be completed within 30 days of the Board Meeting at which final

approval or denial will be considered. A second lien search may be completed just prior to loan closing.

9.2. Collateral Valuation

A commercial appraisal performed by an independent licensed appraiser will be required for all collateralized property. The Board may, at its discretion, waive the requirement to submit an appraisal by an independent licensed appraiser, but only if there is no outstanding debt on the property (other than the RLF loan) and the current year's taxable County assessed value is adequate to meet an 95% loan-to-value ratio.

10. REPAYMENT ANALYSIS

10.1. Primary Source of Repayment

The RLF Manager will calculate Debt Service Coverage (Free Cash Flow/Debt Service Obligation ratio) to help the Board determine whether existing sources of revenue are adequate to repay the loan.

10.2. Secondary Source of Repayment

A secondary source of repayment, should the primary source be inadequate, must be identified. This could include liquidation of property, inventory, and/or machinery and equipment. Secondary sources of repayment may also include the personal guarantee(s) of the applicant's principal owner(s).

11. LOAN/SUBGRANT APPLICATION REVIEW PROCESS

11.1. Application Review

The RLF Manager and QEP shall conduct a completeness review of each application within 30 days of the application deadline. If the application is not complete, the RLF Manager shall notify the applicant of the deficiencies and give the applicant an opportunity to remedy them.

If the RLF Manager determines that the application is complete, the RLF Manager shall have 60 days to conduct due diligence, prepare an analysis report, and submit the application along with an analysis report to the Board for review and potential approval. The Board has 90 days from receiving the application and analysis report to either approve or deny the application.

11.2. Approval

The Board must approve all loans and subgrants to be funded. The EPA must determine the eligibility of all cleanup sites. Written notification of approval and any changes to the proposed loan terms and conditions will be provided to the applicant in a commitment letter. The applicant will be required to acknowledge any terms and conditions outlined in the commitment letter.

11.3. Denial

To comply with the Equal Credit Opportunity Act, each Coalition Partner will adhere to the following procedures:

- If a loan applicant withdraws before consideration by the Board, the entire application should be returned to the applicant.
- If the Board formally declines the loan, the application and supporting documents are not returned to the applicant—only a letter explaining why the loan was denied will be provided to the applicant.
- A formal letter on all denials must be signed by the Chair and sent to the Borrower. The reasons for the denial must be specified and explained in terms the applicant can understand so he/she will know what needs to be overcome for any reconsideration. Otherwise, under provisions of the Freedom of Information Act, the applicant may be entitled to a copy of the entire loan report.
- Reconsideration rights must be stated.

Standard reasons for denial are as follows:

- Inadequate repayment ability of the applicant or guarantors.
- Collateral is not deemed sufficient to protect the interest of Salt Lake County. In other words, insufficient collateral margin.
- Lack of reasonable assurance of repayment.
- Disproportionate amount of debt to tangible net worth (debt-to-equity).
- Inadequate working capital after debt service or insufficient borrower equity.
- The result of granting the financial assistance requested would be to replenish funds distributed to the owner, partners, or shareholders.
- Gross disparity between owner's actual investment and the loan requested.
- Lack of reasonable assurance of compliance with the terms of the loan agreement.
- Unsatisfactory performance on existing loan(s).
- Insufficient program funds available for the request.
- Loan concentration.
- Lack of guarantor strength.
- Lack of secondary sources of repayment.
- Loan does not meet EPA program requirements.
- Low likelihood of successful cleanup.
- Other reasons as determined by the Board.

12. LOAN STRUCTURE

The Board may exercise flexibility in setting loan repayment terms and schedules. Loan structure will include and give consideration to the following:

12.1. Rate

The standard interest rate will be 2% with a default rate of 14% for RLF loans, though the Board may adjust the interest rate on a case-by-case basis. The Board may consider zero-interest loans to public entities and nonprofit entities.

12.2. Repayment Terms

The Board shall determine each loan's repayment schedule based on the applicant's projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk of the project, including the type of contamination and the cleanup schedule.

The Board may establish a loan's repayment schedule based on standard loan amortization schedules, extended amortization schedules with balloon payments of principal, amortization schedules with periods of accruing interest or interest only payments, and such other schedules as the Board may determine to be appropriate. The Board may offer flexible repayment terms in an effort to balance the cash flow needs of the Borrower with the reimbursement needs of the RLF so as to make loan funds available to others.

12.3. Amortization

Notwithstanding the foregoing subsection, loans should generally be repaid based on a ten-year amortization schedule with a five-year balloon payment to facilitate the revolving nature of the funds.

Special provisions, such as deferral of principal payments, interest rate reduction, and balloon payments with amortized payments based on longer terms, may be considered by the Board on a case-by-case basis. When considering special provisions, the Board shall evaluate factors such as the structure of other related loans for the same project, the nature of the collateralized assets, and the Borrower's projected ability to repay the loan.

12.4. Payments and Late Fees

Borrowers shall make loan payments directly to Salt Lake County. Unless otherwise specified in the Loan Agreement with the County, loan payments are due the 1st day of each month, with a late fee of 5% of the payment amount or \$50.00, whichever is greater, due with any payment received on or after the 16th day of the month. The RLF Manager may consider waiving or reducing a late fee if, during the same month in which the loan payment giving rise to the late fee is due, the Borrower makes the loan payment in full and sends to the RLF Manager a letter requesting waiver of the late fee.

12.5. Collateral

Loans shall be secured with a standard form Trust Deed in either first or second position. The County's collateral position may only be subordinated and made inferior to liens securing other loans made in connection with the proposed project (*see* Section 9 for additional details on collateral). If the loan collateral is subject to shared ownership, then all respective parties must execute the loan agreement and loan closing documents. Other acceptable forms of collateral include:

- Standby Letter of Credit. Borrower provides a letter of credit from an approved financial institution. Prior written notice is required for any cancellation or non-renewal.
- Other Real Estate. Borrower provides the County with a first or second priority trust deed on property located in Salt Lake County or Ogden City, whichever is applicable.

- Pledge Account. Borrower enters into an agreement with the County to pledge an approved account for the term of the loan. Types of pledge accounts may include certificates of deposit, savings accounts, and securities accounts (including bonds).
- Assignment of Patents and Licenses. Borrower assigns rights to patents or licenses and any royalties thereunder.
- Life Insurance. Borrowers which depend largely on certain individuals for their success may be required to list Salt Lake County as a beneficiary under adequate life insurance on those key individuals to secure the loan.
- Personal Guarantees. Personal guarantees may be required from any person owning any portion of a business listed as the Borrower.

The RLF Manager and the Board shall consider the merits and potential benefits of requiring each of these forms of collateral. Loans from the RLF will inherently be higher risk than normal commercial financial institutions might be willing to assume. Therefore, when appropriate, the County may require liens, assignments, or other rights to assets. Title insurance must be obtained for each property. Hazard and/or liability insurance will be required and such insurance policies shall list Salt Lake County as loss payee and additional insured.

12.6. Subordination

In most cases, the Board will accept only first or second position security interests, but in rare cases the Board may accept as low as a third position where it is necessary to facilitate the financial participation by private institutional lenders. . When appropriate and feasible, the Board may require a Borrower to subordinate promissory notes payable to officers, owners, or other parties affiliated with the Borrower. Such subordination may include subordination of security interests and/or repayment restrictions.

12.7. Exceptions

The Board may grant exceptions to the requirements of this section on a case-by-case basis—for instance, where assistance from the RLF will result in extraordinary public benefit, or when the Board believes that lack of borrower interest in the RLF Program is cause for severe concern.

13. LOAN/GRANT CLOSING / FEES / COSTS

The following fees shall apply to each loan application and loan. The Board reserves the right to recommend additional fees on a case-by-case basis.

13.1. Application Fee

Applicants shall pay the County an application fee of 0.5% of the requested loan amount or \$500.00, whichever is greater, for each application submitted. This fee is nonrefundable and will help cover expenses like appraisals, credit reports, title searches, etc.

13.2. Origination Fee

Applicants shall pay the County an origination fee of 2% of the requested loan amount or \$1000.00, whichever is greater, for each loan application that is approved. The Origination Fee will help cover

legal and closing costs related to document filing, underwriting, recording, and other associated expenses.

13.3. Monthly Service Fee

For each loan issued, the Borrower shall pay the County a monthly service fee of \$25 to cover loan administration expenses.

13.4. Cost Share

Generally, Borrowers and Subgrant Recipients must bear 20% of the cost of the cleanup portion of the project (note: redevelopment costs are ineligible). The Board shall determine the precise amount of a Borrower's or Subgrant Recipient's cost-share contribution and how the Borrower or Subgrant Recipient may make the contribution. The standard method to ensure that the Borrower or Subgrant Recipient will meet its cost-share obligation is to loan or subgrant only a percentage of eligible cleanup costs to the Borrower.

14. LOAN SERVICING POLICIES

14.1. Payments

Borrowers will make payments to the County in accordance with the loan agreement and promissory note executed at loan closing. All loan payments shall be made via automatic debit. The County shall charge the Borrower a \$50 fee for Non-Sufficient Funds (NSF).

The RLF Manager or designated County employee ("Designee") shall track each loan payment, showing the break-down between principal, interest, and fees. The RLF Manager or Designee shall provide the Board with a report detailing the RLF's fund balance, individual loan performance, and the status of ongoing remediation projects on a quarterly basis (or more frequently as needed). The RLF Manager or Designee shall regularly reconcile the accounting system with accounts and with the overall fund balances and track the performance of each loan.

14.2. Monitoring

The RLF Manager or Designee will specifically monitor the following items:

1. *Financial Statement and Tax Returns*—Financial Statements will be collected in accordance with the loan agreement and tax returns will be requested annually.
2. *Life Insurance Verification*—If life insurance is required for key individuals and is required to be assigned to the County, the RLF Manager or Designee shall verify that Salt Lake County is the assignee for the duration of the payment schedule.
3. *Hazard Insurance Verification*—Hazard insurance will be required and verification that the County is listed as Loss Payee and additional insured on the policy.
4. *Liability Insurance Verification*—When vehicles have been taken as collateral, the Borrower must maintain full coverage with collision on the vehicle(s). The County must be listed as Loss Payee.
5. *Worker's Compensation*—If the Borrower has employees, the Borrower must provide proof of worker's compensation insurance.

6. *Uniform Commercial Code (UCC) Filings*—UCC filing must be filed with the Secretary of State’s office and a continuation statement filed prior to the fifth year anniversary of the initial filing.
7. *Other Renewal Items*—Some loans may require other renewal items, such as liens on livestock brands. The RLF Manager or Designee will monitor these items as well and ensure that continuations are filed when necessary.

The RLF Manager or Designee shall conduct an annual site review at the Borrower’s place of business and/or the cleanup site. During the site visit, staff will verify employment numbers, inspect collateral, and answer questions the Borrower may have concerning their loan with the County. Notwithstanding the foregoing, the RLF Manager may, at his/her discretion, periodically verify the above information throughout the year.

14.3. Special Considerations

The Board may recommend special payment arrangements, such as deferrals of principal, interest payments only, or both. The Board may also recommend that the County defer loan payments under special circumstances or due to unanticipated difficulties.

To be considered for a deferral, the Borrower must submit a written request, along with copies of its most current financial statements to the RLF Manager. In addition, the Borrower must bring any delinquent loans current before the Board will consider the deferral.

The Board shall evaluate each deferral request individually and shall base its decision on a thorough analysis of the Borrower’s financial statements, including historical and projected cash flow. The Board must approve any deviation from this policy.

14.4. Delinquency Policy

Salt Lake County will handle late payments in the following manner:

1. The County will assess late fees in the amount of 5% of the payment amount or \$50.00, whichever is greater, on payments received more than 16 days after the scheduled payment date.
2. If the County has not received payment within 60 days of the scheduled due date and the Borrower has failed to communicate with the RLF Manager or his Designee, the RLF Manager will issue a letter of default to the Borrower.
3. The default penalty for payments that are more than 60 days past due is 14% of the outstanding balance of the loan.
4. If Salt Lake County has not received payment within 90 days of the scheduled due date and the Borrower has failed to communicate with the RLF Manager, the RLF Manager will recommend foreclosure proceedings to the Board. At the Board’s next scheduled meeting, the voting members will be informed of any foreclosure proceedings recommended by the RLF Manager. The County may proceed with foreclosure proceedings with the Board’s consent.

14.5. Loan Workouts and/or Restructuring

If a Borrower defaults, the RLF Manager may work with the Borrower to develop an acceptable workout plan. The RLF Manager may evaluate the following factors to determine the restructuring benefit to the business and the RLF Program:

1. Cash flow available for debt service.
2. Status of accounts payable
3. Status of accounts receivable
4. Existing debt service.
5. Historical and current trends of sales and expenses.

The RLF Manager must present the tentative workout plan to the Board for approval. If the Board approves the workout/restructuring plan, a “Change in Terms” agreement must be executed.

The Borrower must bring any delinquent loans current and pay a \$200.00 fee and any related filing fees to the County before the Board may consider the workout/restructuring plan.

14.6. Foreclosure Policies

In most instances, foreclosure will be viewed as the last option. There are, however, instances when foreclosure is the best option and the only remedy to a deteriorating situation. Foreclosure may take place only upon a vote of the Board.

All foreclosure proceedings and actions should be done in such a way as to provide maximum protection for the loan portfolio, its participating lenders, if any, and for the interest of all affected parties, including the Borrower’s low and moderate income customers. Prior to foreclosing on any property, the Board shall consult legal counsel to discuss the repercussions of any pertinent environmental issues.

Collateral liquidations must attempt to cover the cost of the outstanding loan principal, any accrued interest owed to the County, and the transaction costs of the liquidation efforts (e.g. legal, marketing, staff time, etc.).

If foreclosure proceeds do not cover the outstanding loan amounts due and the cost of the collection, a deficiency judgment will be sought. The foreclosure proceeds will generally be disbursed first to cover collection costs and second to cover loan amounts due.

15. POLICY DEVIATIONS

Any deviation from these policies must be approved by the Board. To be considered for a deviation, an applicant or Borrower must submit a written request for the deviation and the reasons for the request. The Board will issue a written decision concerning the deviation request.

16. AMENDMENTS

Proposed amendments to these Policies and Procedures may be discussed at any properly noticed regular meeting of the Board. A proposed amendment may not violate any provisions of state or federal law or any provision of the Cooperative Agreement with EPA. A proposed amendment may be adopted by affirmative vote of at least four of the seven board members, three of which must have been appointed by different Coalition Partners, but only if the proposed amendment has been presented in writing electronically or by other means to each Board member at least three working days before the meeting at which the amendment will be considered.

17. ETHICAL CONDUCT

The Coalition, each Coalition Partner, each board member, and all other participants in operating the RLF Program must adhere to all applicable laws, rules, and regulations of applicable federal, state, and local governments, including procurement, antidiscrimination, and confidentiality regulations.

APPENDIX A

This appendix outlines eligibility requirements for applicants, properties, and cleanup activities. The Coalition will not award a loan or subgrant to an ineligible applicant or for an ineligible property or ineligible cleanup activity.

I. APPLICANT ELIGIBILITY

To be eligible for a **loan**, an applicant must meet the following requirements:

1. The applicant is a public, non-profit, or private entity with control over or access to a brownfield site.
2. The applicant has income adequate to repay any approved loan funding.
3. The applicant's credit history demonstrates prompt payment of past obligations.
4. The applicant does not have any outstanding judgments or liens.
5. The applicant has not defaulted and is not owned in whole or in part by any individual or entity that defaulted on any loan made with federal funding or under any program administered by the State of Utah or by any of the Coalition Partners.
6. The applicant is not potentially liable under CERCLA §107.
7. The applicant certifies that it is not currently, nor has ever been, subject to any penalty resulting from environmental noncompliance at the brownfield site.
8. The applicant is acceptable to the EPA and cannot have been suspended, debarred, or otherwise declared ineligible by the federal government.
9. The applicant certifies that it will comply with all applicable federal and state law, including Davis-Bacon and Equal Employment Opportunity requirements.
10. The applicant is eligible to participate in an oversight program of the Utah Department of Environmental Quality (UDEQ), of a local health department (Salt Lake Valley Health Department for projects within Salt Lake County and Weber-Morgan Health Department for projects within Ogden City), or other applicable state-administered cleanup program.

To be eligible for a **subgrant**, an applicant must meet the requirements to be eligible for a loan, plus these extra requirements:

1. The applicant owns the property at the time the subgrant is awarded.
2. The applicant retains ownership of the site throughout the period of performance of the subgrant.
3. The applicant is a public or nonprofit entity.

4. The applicant is neither the original grant recipient (Salt Lake County) nor another component of the original grant recipient's own unit of government or organization.
5. The applicant is not a nonprofit organization described in §501(c)(4) of the Internal Revenue Code that engages in lobbying activities as defined in §3 of the Lobbying Disclosure Act of 1995.
6. The applicant must document the extent to which the subgrant will:
 - facilitate the creation or preservation of greenspace (e.g. a park, recreational area);
 - benefit the needs of low income communities who have limited sources of funding for environmental remediation and redevelopment;
 - facilitate the use of existing infrastructure; and
 - promote the long-term use of RLF funds.

Additionally, an ineligible applicant may become eligible based on liability protection under CERCLA as a:

1. bona fide prospective purchaser (BFPP);
2. contiguous property owner (CPO); or
3. innocent landowner (ILO).

To become eligible under these protections (known as the "landowner liability protections"), the applicant must meet certain threshold criteria and satisfy certain continuing obligations to maintain its status as an eligible borrower, or subgrant recipient. These include, but are not limited to, the following:

1. All applicants asserting a BFPP, CPO or ILO limitation on liability must provide an opinion from their counsel that they will perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before acquiring the property.
2. All applicants seeking to qualify as bona fide prospective purchasers or contiguous property owners must certify that they are not:
 - a. potentially liable, or affiliated with any other person that is potentially liable, for response costs through
 - i. any direct or indirect familial relationship; or
 - ii. any contractual, corporate, or financial relationships;

- b. a reorganized business entity that was potentially liable; or
 - c. otherwise liable under CERCLA §107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
3. Applicants must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
- a. complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls;
 - b. taking reasonable steps with respect to hazardous substance releases;
 - c. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - d. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
 - e. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].
4. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), and 107(q).

II. SITE ELIGIBILITY

A property must meet the following requirements to be eligible to receive a Brownfields loan or subgrant from the Coalition:

1. The property must satisfy the definition of a “brownfield site” as reported in CERCLA §101(39)(A), which is “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” Contaminants include petroleum, asbestos, and lead-based paint.
2. The property must be located within the jurisdictional boundaries of Salt Lake County, the Redevelopment Agency of Salt Lake City, or Ogden City. Salt Lake County may not change the boundaries specified in the RLF grant agreement without an amendment to the grant that is approved by an EPA Award Official. These amendments may require justification under EPA’s competition policy
3. The property must meet EPA eligibility requirements

4. The property must meet eligibility requirements for the applicable Utah Department of Environmental Quality or local health department oversight program.
5. The property must be sufficiently characterized to effectively evaluate cleanup alternatives (this is generally beyond Phase II level of sampling).
6. All property taxes and special assessments must be paid and current for the property.

Funds may not be used at any of the following sites:

1. Property that is listed or proposed for listing on the National Priorities List.
2. Property subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decree issued to or entered by parties under CERCLA.
3. Property that is subject to the jurisdiction, custody or control of the United States government, with the exception of land held in trust by the U.S. government for an Indian tribe.
4. Property excluded from the definition of a Brownfields site for which EPA has not made a property-specific funding determination.
5. Property deemed ineligible for funding by EPA.

Additional information concerning eligible properties can be found in the Cooperative Agreement between Salt Lake County and the EPA and in the EPA Brownfields Revolving Loan Fund Administrative Manual.

III. CLEANUP ACTIVITY ELIGIBILITY

Loan or subgrant funds may be used for the following activities:

1. Removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant, petroleum product, or controlled substance into the environment.
2. Oversight of cleanup activities.
3. Installation of fences, warning signs, or other security or site control precautions.
4. Installation of drainage controls.
5. Stabilization of berms, dikes, or impoundments; or drainage or closing of lagoons.
6. Capping of contaminated soils.
7. Using chemicals and other materials to retard the spread of a release or mitigate its effects.
8. Excavation, consolidation, or removal of contaminated soils.

9. Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, including petroleum.
10. Removal of source materials, including free product recovery.
11. Containment, treatment, or disposal of hazardous materials and petroleum products.
12. Site monitoring activities, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
13. Sampling as related to design and implementation of a selected cleanup plan, such as confirmation sampling.
14. Costs associated with documenting alternative approaches to remediating the site.
15. Expenses for site cleanup activities under CERCLA §104(k)(3)(A)(ii).
16. Voluntary cleanup program or state cleanup program fees associated with the site remediation.
17. Costs required to purchase insurance if the purchase of such insurance is necessary to carry out cleanup activities.
18. Costs associated with monitoring and enforcing institutional controls used to prevent human exposure to hazardous substances at a brownfields site (eligibility limited to local government grantees; costs cannot exceed 10 percent of the loan funds).
19. Costs associated with meeting public participation, community notification, and worker health and safety requirements.
20. Expenses for travel, training, equipment, supplies, reference materials, and contractual support, if those costs are reasonable and can be allocated to tasks specified in an approved scope of work.
21. Direct costs for progress reporting to the Lender.
22. Costs incurred by the borrower for procurement are eligible, but only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
23. Costs for design and performance of a remediation plan.
24. Costs for monitoring of a natural resource (e.g., soil, groundwater) for contamination.
25. Construction, demolition, and development activities that are part of and necessary for site cleanup.

Expenses for which a loan or subgrant **may not** be used include, but are not limited to, the following:

1. Pre-cleanup environmental assessment activities, such as site assessment, identification, and initial characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determining the effectiveness of a cleanup.

2. 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.
3. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use.
4. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
5. To pay a penalty or fine.
6. To pay a federal cost-share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
7. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA §107.
8. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
9. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
10. Preparation of applications for Brownfields grants and subgrants.
11. Record retention required under 40 CFR 30.53 and 40 CFR 31.42.
12. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33.
13. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30.
14. Administrative costs.
15. Preparation of applications for loans and loan agreements.
16. Maintaining and operating financial management and personnel systems.
17. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices.
18. Supplies and equipment not used directly for cleanup at the site.

Additional information concerning eligible activities can be found in Chapter 3 of the EPA Revolving Loan Fund Administrative Manual.

APPENDIX B

This appendix outlines the information that the Coalition might request from an applicant when an applicant applies for RLF funding. As shown below, considerable information may be required in the application to evaluate the project and the applicant's financial stability. The following are typical requirements of a loan application:

- Loan application (signed and dated)
- Comprehensive Written Business Plan
- Personal Financial Statement (signed and dated)
- Personal Federal Tax Returns (3 years)
- Authorization to Release Information to WFBCB
- Historical Balance Sheets (3 years or life of the business, whichever is less)
- Historical Profit & Loss Statements (3 years or life of the business, whichever is less)
- Business Federal Income Tax Returns (3 years or life of the business, whichever is less)
- Current Business Balance Sheet (within 30 days); (signed and dated)
- Current Business Profit & Loss Statement (within 30 days); (signed and dated)
- Monthly Projected Cash Flow Statement (1 year)
- Projected Income Statements (2 years)
- Credit report (current) will be secured
- Resumes of Key Personnel
- Description of collateral for the loan.
- Proposed use of funds
- Information necessary to determine the extent and severity of site's contamination problem.
- A cleanup plan, if available.

Additional information that may be required if applicable to the project could include:

- Corporate Documents (By-Laws, Articles of Incorporation, Certificate of Existence, Certificate of Good Standing, etc.)
- Guarantors Loan Application
- Appraisal or Valuation of Land and/or Building(s) will be required for land and building(s) offered as collateral and the appraisal of valuation must be less than six months old. This requirement may be waived if the applicant can verify the value of the land and/or the building(s) in some other form acceptable and approved by the WFBCB. An alternative may be a real estate valuation by a qualified person or tax assessed value.
- Lease Agreement(s) will be required for projects leasing property for the business. In addition, copies of lease arrangements are necessary if the applicant is or will be receiving lease income on property involved in the project.
- Buy/Sell Agreement(s) will be required if the project includes the purchase of property, any existing business, or any other fixed asset that may be used as collateral.
- Inventory List, if floor plan financing is involved (list the amount owed on each item).
- Copies of Valid Bids for Construction projects.
- Written Cost Estimates for Machinery, Equipment, Furnishings & Fixtures Purchases
- Commitment letter from Bank or Other Lender
- Relevant Business Licenses
- Bonding Information
- Verification of Hazard Insurance
- Verification of Life Insurance
- Vehicle Title(s)



7.11

Ben McAdams
Salt Lake County Mayor

September 24, 2014

Nichole Dunn
Deputy Mayor &
Chief Administrative Officer

Honorable Michael Jensen, Chair
Salt Lake County Council
2001 South State, N2200
Salt Lake City, Utah 84190-1010

Re: Interlocal Agreement between Salt Lake County, Ogden City, and the
Redevelopment Agency of Salt Lake City for the Administration and Management
of an EPA Revolving Loan Fund

Dear Councilman Jensen:

On November 28, 2011, the above-referenced parties entered into an agreement to act as a coalition of eligible governmental entities to submit a proposal to the U. S. Environmental Protection Agency for a grant to capitalize a brownfields revolving loan fund.

On September 5, 2012, the EPA awarded the County an initial grant in the amount of one million dollars (\$1,000,000). This funding will be used to make loans and subgrants to eligible recipients to clean up eligible brownfields sites and to conduct other necessary activities to prudently manage the revolving loan fund.

The agreement will be effective upon execution by all parties and will continue through December 31, 2019 at which time the parties shall have the option to extend the agreement for two (2) additional five-year terms.

Sincerely,

A handwritten signature in black ink that reads 'Nichole Dunn'.

Nichole Dunn, Deputy Mayor
Salt Lake County Office of the Mayor

Attachment



September 30, 2014

COUNTY COUNCIL

Michael H. Jensen, Chair
District #2

Randy Horiuchi
At-Large A

Richard Snelgrove
At-Large B

Jim Bradley
At-Large C

Arlyn Bradshaw
District #1

Aimee Winder Newton
District #3

Sam Granato
District #4

Steven L. DeBry
District #5

Max Burdick
District #6

Ms. Emily Farmer
Office of Economic Development
Rm. S2100, Government Center
Salt Lake City, Utah

Dear Ms. Farmer:

The Salt Lake County Council, at its meeting held this day, approved the attached RESOLUTION NO. 4870 authorizing execution of an INTERLOCAL AGREEMENT between Salt Lake County for its Office of Economic Development and **Ogden City, and the Redevelopment Agency of Salt Lake City** – Administration and Management of an EPA Revolving Loan Fund.

On September 5, 2012, the Environmental Protection Agency (EPA) awarded a \$1,000,000 grant to Salt Lake County, Ogden City, and the Redevelopment Agency of Salt Lake City to capitalize a brownfields revolving loan fund. The interlocal agreement will create policies and procedures for the management of the Wasatch Brownfields Revolving Loan Fund and the administration of the \$1 million grant.

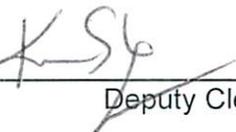
The term of the agreement is from date of execution through December 31, 2019.

Pursuant to the above action, you are hereby authorized to effect the same.

Respectfully yours,

SALT LAKE COUNTY COUNCIL

SHERRIE SWENSEN, COUNTY CLERK

By  _____
Deputy Clerk

ld

pc: Darrin Casper/Mayor's Office
Nichole Dunn/Mayor's Office

SALT LAKE COUNTY, UTAH

RESOLUTION NO. 4870

September 30, 2014

Contract RED14001
Salt Lake County

A RESOLUTION OF THE COUNTY COUNCIL OF SALT LAKE COUNTY APPROVING AND AUTHORIZING EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN SALT LAKE COUNTY, OGDEN CITY, AND THE REDEVELOPMENT AGENCY OF SALT LAKE CITY IN RELATION TO THE ADMINISTRATION AND MANAGEMENT OF AN EPA REVOLVING LOAN FUND.

RECITALS

A. Salt Lake County ("County"), Ogden City ("City"), and the Redevelopment Agency of Salt Lake City ("RDA") (collectively, the "Parties" or the "Coalition") are "public agencies" as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the "Cooperation Act"), and, as such, are authorized by the Cooperation Act to enter into this Agreement to act jointly and cooperatively on the basis of mutual advantage.

B. The Parties entered into an interlocal cooperation agreement dated November 28, 2011 wherein the Parties formally agreed to act together as a coalition of eligible governmental entities to submit a proposal to the U.S. Environmental Protection Agency ("EPA") for a grant to capitalize a brownfields revolving loan fund.

C. On September 5, 2012, the EPA awarded the County an initial grant in the amount of one million dollars (\$1,000,000). According to the terms of the Cooperative Agreement entered into with the EPA, the grant provides funds for the County and its Coalition Partners to capitalize the Wasatch Brownfields Revolving Loan Fund from which to make loans and subgrants to eligible recipients to cleanup eligible brownfields sites, and to conduct other necessary activities to prudently manage the RLF.

D. The Cooperative Agreement contains a 20% cost share requirement and also provides that the Coalition will initially utilize the \$1 million grant to help facilitate the cleanup and redevelopment of eight priority sites identified in the Coalition's grant application and other potential sites within Salt Lake County or Ogden City.

E. The Parties now desire to enter into the Interlocal Cooperation Agreement attached hereto as **ATTACHMENT 1** (the "Agreement") wherein the Parties agree to adopt the policies and procedures attached to the Agreement (the "Policies and Procedures") and to be governed by such Policies and Procedures in the management of the Wasatch Brownfields RLF and the administration of the initial \$1 million grant award and any supplemental EPA funding awarded to the Coalition in the future, and wherein the Parties agree to appoint members to the Wasatch Brownfields RLF Board as well as an RLF Manager all in accordance with the Policies and Procedures.

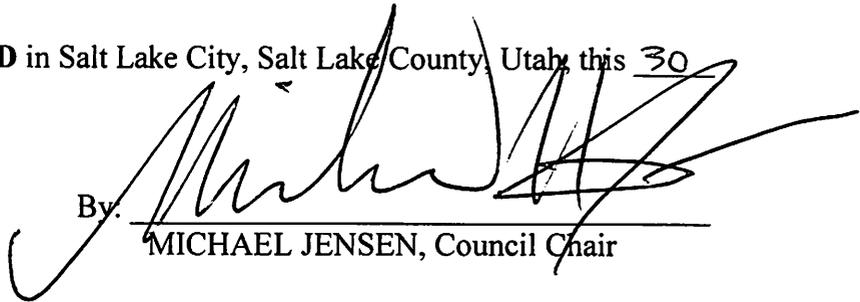
F. The County Council of the County believes that the County's participation under the Agreement will contribute to the prosperity, moral well-being, peace and comfort of Salt Lake County residents.

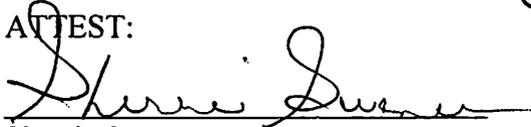
RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the County Council as follows:

1. The County Council hereby approves the attached Interlocal Cooperation Agreement between Salt Lake County, Ogden City, and the Redevelopment Agency of Salt Lake City, in substantially the form attached hereto as **ATTACHMENT 1**, and authorizes the Salt Lake County Mayor to execute the same.
2. The Interlocal Cooperation Agreement shall become effective upon execution by all Parties and upon filing with the keeper of records of each Party as provided by Section 11-13-209 of the Cooperation Act.

APPROVED AND ADOPTED in Salt Lake City, Salt Lake County, Utah, this 30 day of September, 2014.

By: 
 MICHAEL JENSEN, Council Chair

ATTEST:

 Sherrie Swensen
 Salt Lake County Clerk

Councilman Bradley	<u>"Aye"</u>
Councilman Bradshaw	<u>"Aye"</u>
Councilman Burdick	<u>"Aye"</u>
Councilman DeBry	<u>"Aye"</u>
Councilman Horiuchi	<u>Absent</u>
Councilman Granato	<u>"Aye"</u>
Councilman Jensen	<u>"Aye"</u>
Councilman Snelgrove	<u>"Aye"</u>
Councilman Newton	<u>"Aye"</u>

APPROVED AS TO FORM:

 Stephen Barnes
 Deputy District Attorney
 Dated: 9-25-2014