EXHIBIT 1
TO BROWNFIELD REVOLVING LOAN SECONDARY SUBGRANT AGREEMENT
BETWEEN THE RCNRHS AND THE EDA DATED December 16, 2009

PRIMARY SUBGRANT AGREEMENT FOR IMPLEMENTATION AND ADMINISTRATION OF A BROWNFIELD REVOLVING LOAN FUND

This is a Primary Subgrant Agreement for the implementation and administration of a Brownfield Revolving Loan Fund (Agreement), between the City of Roanoke, Virginia, a municipal corporation (Grantee or City) and the Economic Development Authority of the City of Roanoke, Virginia, an industrial development authority organized and existing under the laws of the Commonwealth of Virginia (Subgrantee or EDA). This Agreement is dated September 3, 2009.

WITNESSETH:

WHEREAS, by Resolution No. 37931-101807, adopted October 18, 2007, the Council of the City of Roanoke, Virginia (Council) authorized the City Manager to execute a Cooperative Agreement with the U.S. Environmental Protection Agency (Grantor or EPA) for the City to receive $1,200,000 (which includes a $200,000 match from the City) for a Brownfield Revolving Loan Fund to capitalize a revolving loan fund and provide subgrants and/or loans to carry out cleanup activities at brownfield sites in the City. Such Resolution also authorized the City Manager to enter into other agreements, including subgrant agreements with the EDA and/or other entities in order to develop and implement the Brownfield Revolving Loan Fund Program.

WHEREAS, the City's comprehensive plan, *Vision 2001-2020*, recognizes the redevelopment of underused commercial and industrial property (brownfields) as a strategic economic development initiative;

WHEREAS, real and perceived environmental conditions can hinder the reuse potential of these properties due to uncertainty of costs and liability associated with the assessment and cleanup of such environmental conditions;

WHEREAS, the City of Roanoke has pursued brownfield grant funds from the EPA and the Virginia Department of Environmental Quality (DEQ), including an EPA Brownfield Revolving Loan Fund (RLF) grant to remove uncertainty from brownfield sites and serve as an incentive to prospective developers by making available subgrants and/or loans to carry out cleanup activities at brownfield sites in the City;

WHEREAS, pursuant to the laws of the Commonwealth of Virginia, the Code of the City of Roanoke (1979), as amended, and with the approval of City Council, the City of Roanoke received a RLF grant of $1,200,000 (which includes a $200,000 match from the City) which must be implemented by another entity other than the City and the Subgrantee (EDA) has agreed to act as such other entity to implement the RLF;

WHEREAS, the EDA has the legal authority to implement and administer the RLF by issuing subgrants and/or loans under the RLF; and

WHEREAS, the EDA has agreed to implement and administer the RLF as a Subgrantee from the City under the terms and provisions of this Agreement as set forth herein.

NOW, THEREFORE, the parties, in consideration of the promises and obligations contained herein, mutually agree that the above recitals are incorporated into this Agreement and further mutually agree as follows:

SECTION 1. EPA REVOLVING LOAN FUND GRANT COOPERATIVE AGREEMENT.

Subgrantee shall comply with all applicable provisions of the Cooperative Agreement with a date of award of September 5, 2007, between the U.S. Environmental Protection Agency and the City of Roanoke which provides for the RLF monies and sets forth various terms and obligations under that Cooperative Agreement (Cooperative Agreement). Such Cooperative Agreement is attached hereto and made a part hereof as Exhibit 1.

SECTION 2. IMPLEMENTATION AND ADMINISTRATION OF RLF GRANT BY SUBGRANTEE.

Subject to the terms of this Agreement, the Subgrantee shall implement and administer the RLF and will make loans and/or subgrants as may be appropriate under the terms of this Agreement and the provisions of the Cooperative Agreement for the purposes of promoting economic development in the City. However, the Subgrantee's obligations hereunder are not general obligations of the Subgrantee, but are special obligations of the Subgrantee limited to those funds which are provided by the City and received by the Subgrantee under the terms set forth herein.

SECTION 3. OBLIGATIONS OF THE CITY.

The City agrees to provide to the EDA the services of City staff and resources to support the EDA for the process of the issuance of loans and subgrants as part of the City's Brownfield Program by doing or providing the following:

A. City staff will develop a formal application form and application process for all entities interested in a loan or subgrant from the RLF.

B. City staff will develop loan and subgrant agreements to be executed between the EDA and the loan or subgrant recipients that meet the terms of the EPA Cooperative Agreement.

C. City staff will develop eligibility and evaluation criteria consistent with the EPA Cooperative Agreement and City policy (City's comprehensive plan, applicable neighborhood plan(s) and the *City-Wide Brownfield Redevelopment Plan).*

D. City staff will review applications for conformance with the established eligibility and evaluation criteria.

E. City staff will confirm with the EPA that the site and applicant are eligible for funding.

F. City staff will review individual applications and will make a formal recommendation to the EDA on each application.

G. City staff will review all reports, work plans and related environmental documents and/or procure third-party consulting services to review such documents as part of the application review process and/or during the execution of work performed with RLF funds.

H. City staff will recommend specific agreement terms related to amount of the loan or subgrant. City staff will recommend the terms of loans related to duration, interest rates, etc. and/or procure third-party services for such recommendations.

I. City staff will prepare routine reports and maintain records as required by the EPA Cooperative Agreement.

J. City staff will coordinate reviews of site/recipient eligibility and approvals of loan and subgrant agreements with EPA.

K. City staff will request fund transfers from EPA into the applicable City account(s) and then the City will appropriate funds to the EDA for the EDA to make loans and/or subgrants to approved recipients.

L. The City will monitor progress, prepare required reports, and maintain required records for EPA, and request fund transfer from EPA upon approval of recipient invoices.

M. City Staff will take reasonable steps to assist the EDA in enforcing the terms of the Agreement in the case of a default by a recipient of a loan and/or subgrant.

SECTION 4. OBLIGATIONS OF THE EDA.

The EDA agrees to support the City's Brownfield Program by issuing loans and subgrants as provided for in this Agreement and the Cooperative Agreement and by doing or providing the following:

A. EDA shall comply with the applicable provisions of the Cooperative Agreement.

B. EDA will review applications, supporting data, proposed loan and/or subgrant agreements and City staff recommendations for RLF loans and subgrants and approve or disapprove applications in a timely manner.

C. EDA may request additional information from an applicant or City staff prior to approving a loan or subgrant.

D. EDA will execute loan and/or subgrant agreements with approved loan or grant recipients.

E. EDA will authorize payments from the EDA's accounts to loan or subgrant recipient based on the terms of the respective agreements.

F. The EDA will not be obligated to repay defaulted loans to the City.

G. The EDA will not be obligated to review or approve technical documents (e.g., remediation plans or approve cleanup standards, cleanup approaches, etc.).

SECTION 5. LOAN AND SUBGRANT AGREEMENT TERMS.

A. City staff will develop specific terms for each loan and/or subgrant upon review of the prospective recipients application package.

B. The loan and/or subgrant terms will be contained in an agreement developed by City staff and approved by the EDA.

C. Specific terms regarding the term for repayment, interest, etc. may be tailored based upon the magnitude of the project, potential tax revenue, number of jobs created, etc.

D. The loan and/or subgrant agreements will include provisions for transfer of funds to the recipient as work progresses and provisions should default occur or if the recipient is otherwise unable to perform the proposed cleanup work.

SECTION 6. DISTRIBUTION OF RLF FUNDS.

Specific terms for distribution of EPA RLF funds will be established in the loan and/or subgrant agreement executed between the EDA and the recipient and will generally proceed as follows:

A. Recipient will be required to submit a reimbursement request to the EDA, with a copy to the City, in accordance with the terms of the loan and/or subgrant agreement.

B. City staff will review the request and upon EDA approval the City will appropriate funds to the applicable EDA account.

C. City staff will request an electronic fund transfer from EPA for deposit in the City's designated grant account (35-615-8106) to cover the City's appropriation to the EDA.

D. EDA will issue a loan and/or subgrant check to the recipient in the approved amount of the reimbursement request in accordance with the terms of the loan and/or subgrant agreement.

SECTION 7. LOAN REPAYMENT.

A. The loan recipient shall be responsible to repay the loan in accordance with the terms of the loan agreement with the EDA.

B. The EDA shall transfer, within 14 days after receipt of such funds, the loan payments the EDA receives to the City for deposit in an account designated by the City's Director of Finance for use in making future loans or subgrants under the RLF Program.

SECTION 8. PAYMENT OF EDA'S FEES.

The loan and/or subgrant recipient may be required to pay reasonable fees, costs, and expenses of the EDA in connection with the development and execution of the loan and/or subgrant agreement as part of the loan and/or subgrant closing.

SECTION 9. REPORTING.

A. The loan and/or subgrant recipient shall provide to the EDA, the City, and any other required entity all reports and other information and documents as required by the Cooperative Agreement and any other provisions in the loan and/or subgrant agreement for the project.

B. City staff shall compile the information submitted by the loan and/or subgrant recipients and prepare and submit to the EPA such reports on behalf of the City and/or EDA as required by the Cooperative Agreement.

C. Subgrantee agrees to maintain all books, records and other documents relating to this Agreement for a period of five (5) years after the end of each fiscal year included in this Agreement. The City, its authorized employees, agents, representatives, and/or state and federal auditors shall have full access to and the right to examine, copy, and/or audit any of such materials during the term of the Agreement and during such retention period, upon prior written notice to Subgrantee.

SECTION 10. COMPLIANCE WITH LAWS AND COOPERATIVE AGREEMENT.

A. The loan and/or subgrant recipient shall comply with the requirements and provisions of the Cooperative Agreement and the laws and regulations referenced therein as part of the terms of the loan and/or subgrant agreement.

B. The loan and/or subgrant recipient will be required to comply with applicable environmental laws and regulations governing the cleanup of the site.

C. The loan and/or subgrant recipient will be required to develop a cleanup plan with specific cleanup approach, cleanup levels, land use controls, and/or monitoring provisions, as applicable, through a state and/or federal cleanup program. The cleanup plan must be approved by the applicable state and/or federal agency before RLF funds are expended on a project.

SECTION 11. COOPERATION.

Each party agrees to cooperate with the other in a reasonable manner to carry out the intent and purpose of this Agreement.

SECTION 12. AUTHORITY TO SIGN.

The persons who have executed this Agreement on behalf of the parties represent and warrant that they are duly authorized to execute this Agreement on behalf of their respective entity.

SECTION 13. COUNTERPART COPIES.

This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 14. APPROPRIATION OF FUNDS.

Funding for the RLF has been appropriated by Budget Ordinance No. 37932-101807, adopted on October 18, 2007, and includes $1,000,000 in grant funds from the EPA and $200,000 in City funds. No additional City funds will be used for the RLF program unless specific additional appropriations are made and approved by City Council.

SECTION 15. NOTICES.

All notices must be given in writing and shall be validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, with a receipt, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

If to City, to:

City of Roanoke
Attn: City Manager
Noel C. Taylor Municipal Building, Room 364
215 Church Ave., SW
Roanoke, VA 24011

With copies to:

City of Roanoke
Attn: Director of Planning Building and Development
Noel C. Taylor Municipal Building, Room 166
215 Church Ave., SW
Roanoke, VA 24011

City of Roanoke
Attn: EDA Corporate Secretary
Office of Economic Development
117 Church Avenue, SW
Roanoke, VA 24011

If to EDA, to: Chair, Economic Development Authority of the City of Roanoke
c/o Harwell M. Darby, Jr., Esquire
Glenn, Feldman, Darby & Goodlatte
37 Campbell Avenue, SW
Roanoke, VA 24011

Notices shall be deemed to be effective one day after sending if sent by overnight courier or three (3) days after sending it by certified mail, return receipt requested.

SECTION 16 . AGREEMENT SUBJECT TO FUNDING.

A. EPA Brownfield RLF monies to be made available by the Grantee under this Agreement are contingent upon necessary appropriations by the U.S. Congress. In the event that sufficient funds are not appropriated and/or made available to Grantee, at the sole discretion of the Grantee, this Agreement may be terminated by the Grantee, in whole or in part, by seven (7) days written notice to the Subgrantee.

B. This Agreement is or may be subject to funding and/or appropriations from federal, state and/or local governments and/or agencies and/or from the Council of the City of Roanoke. If any such funding is not provided, withdrawn, or otherwise not made available for this Agreement, the Subgrantee agrees that the City may terminate this Agreement on seven (7) days written notice to Subgrantee, without any penalty or damages being incurred by the City. Subgrantee further agrees to comply with any applicable requirements of any grants and/or agreements providing for such funding.

SECTION 17. ANTI-LOBBYING.

The Subgrantee agrees to comply with 40 CFR Part 34, New Restrictions on Lobbying. Subgrantee shall submit completed copies of EPA "Certification Regarding Lobbying" form and/or Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

SECTION 18. EQUAL EMPLOYMENT OPPORTUNITY.

Nondiscrimination – During the performance of this Agreement, the Subgrantee agrees as follows:

A. The Subgrantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Subgrantee. The Subgrantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Subgrantee, in all solicitations or advertisements for employees placed by or on behalf of the Subgrantee, will state that such Subgrantee is an equal opportunity employer.

C. Notices, advertisement and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

D. The Subgrantee will include the provisions of the foregoing subsections (A), (B) and (C) in every contract or purchase order of over ten thousand dollars and no cents ($10,000.00) so that the provisions will be binding upon each contractor or vendor.

SECTION 19. DRUG-FREE WORKPLACE.

The Subgrantee will: (i) provide a drug-free workplace for the Subgrantee's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Subgrantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Subgrantee that the Subgrantee maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars and no cents ($10,000.00), so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this subsection, "drug-free workplace" means a site for the performance of work done in connection with this Agreement.

SECTION 20. FAITH-BASED ORGANIZATIONS.

Pursuant to §2.2-4343.1 of the Code of Virginia (1950), as amended, the City of Roanoke does not discriminate against faith-based organizations.

SECTION 21. AMENDMENTS.

The Grantee may, from time to time, require changes in the obligations of the Subgrantee hereunder, or its City Council may appropriate further funds for the implementation of the Program. In such event or events, such changes which are mutually agreed upon by and between the Grantee and the Subgrantee shall be incorporated by written amendment to this Agreement.

SECTION 22. HEADINGS.

The captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.

SECTION 23. SEVERABILITY.

If any provision of this Agreement, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected and all other terms and conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 24. ASSIGNMENT.

Subgrantee may not assign or transfer this Agreement in whole or in part except with the prior written consent of the City, which consent shall not be unreasonably withheld. If consent to assign is given, no such assignment shall in any way release or relieve the Subgrantee from any of the covenants or undertakings contained in this Agreement and the Subgrantee shall remain liable for the Agreement during the entire term thereof.

SECTION 25. CONTRACTUAL DISPUTES.

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the earlier of the final payment or termination of the Agreement or notice from the City to the Subgrantee that the City disputes the amount of Subgrantee's request for final payment. However, written notice of the Subgrantee's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Subgrantee. A written decision upon any such claims will be made by the City Manager or the City Manager's designee (hereafter City Manager) within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the City Manager. The Subgrantee may not institute legal action prior to receipt of the City's decision on the claim unless the City Manager fails to render such decision within 120 days from submittal of Subgrantee's claim. The decision of the City Manager shall be final and conclusive unless the Subgrantee within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Va. Code. Failure of the City to render a decision within said 120 days shall not result in the Subgrantee being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the City's failure to render a decision within said 120 days shall be Subgrantee's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2 - 4365 of the Va. Code has been established for contractual claims under this Agreement.

SECTION 26. SUCCESSORS AND ASSIGNS.

The terms, conditions, provisions, and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 27. COMPLIANCE WITH LAWS, REGULATIONS, AND IMMIGRATION LAW.

Subgrantee agrees to and shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all applicable licensing requirements. Subgrantee further agrees that Subgrantee does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

SECTION 28. CHOICE OF LAW AND FORUM SELECTION.

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions, and any applicable federal laws. Venue for any litigation, suits, and claims arising from or connected with this Agreement shall only be proper in the Roanoke City Circuit Court, or in the Roanoke City General District Court if the amount in controversy is within the jurisdictional limit of such court or the United States District Court for the Western District of Virginia, Roanoke Division, if a federal question exists. All parties to this Agreement voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party, but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

SECTION 29. NONWAIVER .

Subgrantee agrees that the Grantee's waiver or failure to enforce or require performance of any term or condition of this Agreement or the Grantee's waiver of any particular breach of this Agreement by the Subgrantee extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Agreement or a waiver of any other breaches of the Agreement by the Subgrantee and does not bar the Grantee from requiring the Subgrantee to comply with all the terms and conditions of the Agreement and does not bar the Grantee from asserting any and all rights and/or remedies it has or might have against the Subgrantee under this Agreement or by law.

SECTION 30. ENTIRE AGREEMENT.

This Agreement, together with and exhibits or attachments, constitutes the entire agreement of the parties and supersedes all prior Memoranda between parties on this matter. No amendment to this Agreement shall be valid unless made in writing and signed by the appropriate parties.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their authorized representatives.

ATTEST/WITNESS:

Stephanie M. Moon

Stephanie M. Moon, City Clerk
Printed Name and Title

CITY OF ROANOKE

By: Darlene Burcham
Darlene L. Burcham, City Manager

ATTEST/WITNESS:

Linda D. Frith
Linda Davis Frith, Secretary

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF ROANOKE, VIRGINIA

By Charles E. Hunter III
Charles E. Hunter, III, Chairman

Approved as to Form:

Garry E. Tegenkamp
A. City Attorney 9-18-09

Appropriation of Funds Required for this Agreement are subject to future appropriations

For Director of Finance – City of Roanoke

9/18/09 35-615-8106
Date Acct #

Approved as to Execution:

Garry E. Tegenkamp
A. City Attorney 9-18-09

Approval by Grants:

Ian D. Shaw, Senior City Planner
Printed Name and Title 9/18/09

Authorized by Resolution No. 37931-101807.

EXHIBIT 1 TO
PRIMARY SUBGRANT AGREEMENT
BETWEEN CITY OF ROANOKE AND EDA
DATED SEPTEMBER 3, 2009

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

ASSISTANCE ID NO.		
PRG	DOC ID	AMEND#
BF -	97357101	- 0

DATE OF AWARD
09/05/2007

TYPE OF ACTION
New

MAILING DATE
09/12/2007

PAYMENT METHOD:
EFT

ACH#
9891

RECIPIENT TYPE:
Municipal

Send Payment Request to:
N/A

RECIPIENT:
City of Roanoke Attn: City Manager
Noel C. Taylor Municipal Bldg-215 Church Ave SW-Rm 364
Roanoke, VA 24011
EIN: 54-6001569

PAYEE:
City of Roanoke Attn: City Manager
Noel C. Taylor Municipal Bldg-215 Church Ave SW-Rm 364
Roanoke, VA 24011

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Ian D. Shaw Noel C. Taylor Municipal Bldg-215 Church Ave SW-Rm 166 Roanoke, VA 24011 **E-Mail:** ian.shaw@roanokeva.gov **Phone:** 540-853-5808	Felicia Fred 1650 Arch Street, 3HS51 Philadelphia, PA 19103-2029 **E-Mail:** Fred.Felicia@epa.gov **Phone:** 215-814-5524	Tanya Thomas Grants and Audit Management Branch, 3PM70 **E-Mail:** Thomas.Tanya@epa.gov **Phone:** 215-814-5408

PROJECT TITLE AND DESCRIPTION
BROWNFIELD REVOLVING LOAN FUND
Funds for hazardous substances will be used to capitalize a revolving loan fund and provide subgrants to carry out cleanup activities at brownfield sites in the City of Roanoke, Virginia.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2007 - 09/30/2012	10/01/2007 - 09/30/2012	$1,200,000.00	$1,200,000.00

NOTICE OF AWARD

Based on your application dated 06/29/2007, 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 83.34% 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	**ORGANIZATION / ADDRESS**
US EPA Region 3, 3PM70 1650 Arch Street Philadelphia, PA 19103-2029	U.S. EPA, Region 3 Hazardous Site Cleanup Division 3HS00 1650 Arch Street Philadelphia, PA 19103-2029

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
Digital signature applied by EPA Award Official	James W. Newsom, ARA for Policy and Management	09/05/2007

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
By: [signature] City of Roanoke, Virginia	Darlene L. Burcham, City Manager	10-31-07

APPROVED AS TO FORM:

[signature] 10/25/07
Assistant City Attorney

APPROVED AS TO EXECUTION:

[signature] 10-31-07
Assistant City Attorney

Authorized by Resolution No. 37931-101807
City Matching Funds ($200,000) For This Agreement Certified:

[signature]
Director of Finance

Acct. No. 35-615-8106-8105
Date: 10/30/07

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) CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
ROANOKE	0703BF0022	07	E4	0300AG7	402D79E	4114	G300OL00	-	1,000,000
									1,000,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$0
2. Fringe Benefits	$0
3. Travel	$2,500
4. Equipment	$0
5. Supplies	$3,250
6. Contractual	$1,194,250
7. Construction	$0
8. Other	$0
9. Total Direct Charges	$1,200,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 16.66 % Federal 83.34 %.)	$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. The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

Automated Standard Application for Payments (ASAP)

ASAP is an automated drawdown system sponsored by the U.S. Department of the Treasury. Recipients must enroll with Treasury. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485, or by visiting www.fms.treas.gov/asap.

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

Electronic Funds Transfer (EFT)

Under this payment mechanism, the recipient submits an EPA Payment Request Form to EPA for approval. Approved funds are credited to the recipient organization at its designated financial institution. In order to receive EFT payments the recipient must first complete and return the *ACH Vendor/Miscellaneous Payment Enrollment* form (SF 3881) to the EPA Las Vegas Finance Center. The Enrollment form can be found by visiting http://www.epa.gov/ocfo/finservices/payinfo.htm#grants. Upon receipt and processing of the enrollment form, the LVFC will send you an email message with your EFT Control Number, a Recipient's manual and the required forms. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485.

2. The recipient agrees to maintain a financial management system in accordance with 40 CFR 30.21 or 31.20, as applicable, that will allow the recording and reporting of costs on a site-specific basis, by action code and tracking code. An individual site identifier must be developed by EPA for each action code and tracking code for which you will incur costs on each site. Prior to submitting the initial request for payment from EPA for each action and tracking code for a site, you must first notify the EPA Project Officer, via email or mail and provide the following information:

a. Site name
b. Site address
c. Action Code (See Attachment A, Brownfields Action Codes)
d. Tracking Code (See Attachment B, Brownfields Tracking Codes)

3. The recipient agrees to the following conditions in accepting this assistance agreement:

a. Cash drawdown will be made only as actually needed for its disbursement;

b. Timely reporting of cash disbursements and balances will be provided, as required. Federal Cash Transactions Reports (SF-272) must be submitted annually. The annual report is due **January 15**. The SF-272s should be mailed to U.S. EPA - Las Vegas Finance Center, P.O. Box 98515, Las Vegas, NV 89193-8515 or faxed to 702-798-2423, and

c. The recipient will impose the same standards of timing and reporting on secondary recipients, if any.

d. **Identify requests for payment under the site identifier established under Condition 2 of this agreement.**

Failure on the part of the recipient to comply with the above conditions may cause the undisbursed

portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

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

5. 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 in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). 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.

6. The 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)." The 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. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The 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.

The recipient may access the Excluded Parties List System at http://epls.arnet.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

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

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

8. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, Lobbying and Litigation Certificate, within 90 days after the end of project period.

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. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

9. In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* the recipient agrees to use recycled paper 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. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition,*

Recycling, and Waste Prevention in its entirety.

10. If a contract is awarded under this assistance agreement, the recipient agrees and is required to utilize the following affirmative steps:

a. placing Small Businesses in Rural Areas (SBRAs) on solicitation lists;

b. ensuring that SBRAs are solicited whenever they are potential sources;

c. dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;

d. establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;

e. using the services of the Small Business Administration (SBA), the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce and the SBA PRO-Net Internet-based system http://pro-net.sba.gov, as appropriate; and

f. requiring the contractor to take the affirmative steps in subparagraphs a. through e. of this part if subcontracts are awarded.

11. In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the report to:

Federal Audit Clearinghouse
1201 East 10th Street
Jeffersonville, IN 47132

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

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

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

13. The recipient agrees to:

a. Establish all subaward agreements in writing;

b. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);

c. 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;

d. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;

e. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;

f. 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;

g. 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

h. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in with 40 CFR Parts 30.25 and 31.30, as applicable.

Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipients' 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.

14. The recipient agrees that 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.

15. Pursuant to 40 CFR 31.41(b) and 31.50(b), the recipient agrees to submit to EPA an interim and/or final Financial Status Report (FSR) (SF-269 or 269A) as follows:

a. Annual interim FSRs are due within 90 days after the reporting period end date. The reporting period end date is based on the budget period start date of the assistance agreement. **Interim FSRs should be mailed to Ms. Kathleen M. Blinebury, Grants Management Officer, Grants and Audit Management Branch (3PM70), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.**

b. Final FSRs are due within 90 calendar days after termination or completion of the assistance agreement. **Final FSRs should be mailed to U.S. EPA - Las Vegas Finance Center (LVFC), P.O. Box 98515, Las Vegas, NV 89193-8515 or faxed to 702-798-2423.**

For activities, a breakdown must be attached to the FSR that shows total costs charged to each site identifer.

A FSR Preparation Package, which includes forms and instructions to aid in the preparation of the FSR, is available on the Region III website:

http://www.epa.gov/region3/fsr/index.htm

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43, if the recipient does not comply with this term and condition.

16. 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:

a. The recipient accepts the applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the Virginia Department of Environmental Quality, as follows:

	MBE%	WBE%
Construction	1.7	0.8
Equipment	0.4	0.5
Services	1.3	0.6
Supplies	0.8	0.5

b. The recipient agrees to ensure to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially or economically disadvantaged individuals, women and historically black colleges and universities.

c. The recipient agrees to include in its bid documents the applicable "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.

d. The recipient agrees to follow the six affirmative steps or positive efforts stated in 40 CFR 30.44(b), 40 CFR 31.36(e), or 40 CFR 35.6580, as appropriate, and retain records documenting compliance.

e. The recipient agrees to submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to Zeradian Kelly-Abrams, Administrative Support Branch (3HS42), within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30).

f. If race and/or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "fair share" objective.

EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

17. EPA participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule, 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, 2007, the limit is $557.28 per day and $69.66 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 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)(2) or 30.27(b), as applicable.

18. The recipient agrees that 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.

Programmatic Conditions

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients:

a. In implementing this agreement, the cooperative agreement recipient (CAR) 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.
b. 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.
c. If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and environment.

2. Borrowers and Subgrant Recipients:

a. 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 Part 31 and OMB Circular A-87 for governmental CARs of subgrants or 40 CFR Part 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR Part 30 and OMB Circular A-21 for educational institutions recipients of subgrants.
b. CERCLA §104(g) requires that borrowers and subgrantees comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts " funded in whole or in part" with funds provided under this agreement. The CAR must ensure that the borrower or subgrantee obtains recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
c. The CAR agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.
d. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR §31.36(e) or 40 CFR §30.44(b); 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.

B. Eligible Brownfields Site Determinations

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. 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 that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):

(a) that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
(b) that the State determines there is "no viable responsible party" for the site;
(c) that 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) that 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 petroleum program official.

4. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and 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 a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the CAR 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 section 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 must also make all determinations on the eligibility of petroleum-contaminated brownfields sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact EPA Project Officer and provide the information necessary for EPA to make the determinations described in 3.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years from the start of the budget and project period, unless otherwise extended by EPA at the CAR's request.
2. If after 2 years, EPA determines that the CAR has not made sufficient progress in implementing its RLF, EPA may terminate the agreement. 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; 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.
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 on which sites qualify as a brownfields site and when determining whether the statutory prohibition found in §104(k)(4)(B)(i)(IV) of CERCLA applies. Generally, this prohibition prohibits a grant or loan CAR from using grant funds to cleanup a site if the CAR 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 section 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.
c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment and cleanup activities at a particular site, if they do not have such a professional on staff.

a. 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.
b. 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 reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:

a. Documentation of: progress at meeting performance outcomes/outputs; project narrative; project time line, and an explanation for any slippage in meeting established outputs/outcomes.
b. An update on project milestones.
c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR, borrowers or subgrant recipients at petroleum sites.

3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, and the completion of cleanup activities and other relevant project milestones, e.g, concerning institutional controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on-line reporting system by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on-line at: http://www.epa.gov/brownfields/pubs/rptforms.htm

4. 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 assistance agreement work plan.

5. In accordance with 40 CFR §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas; 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

6. The recipient agrees to submit quarterly performance reports to the EPA Project Officer. The reports are due 30 days after the reporting period. Final performance reports are due 90 days after the end of the budget period.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA §104(k)(9)(B)(iii) requires the CAR 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 Recipients, Borrowers, and/or Subgrant Recipients

1. To the extent allowable under the EPA approved work plan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.

a. The CARs must maintain records that will enable it to report to EPA on the amount of costs incurred by the CARs, borrowers or subgrant recipients at petroleum-only brownfields sites.

b. At least 60% of the funds must be used by the CARs to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 40% 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).

c. The CARs 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. For an RLF cooperative agreement budget as a whole, the total dollar amount of principal forgiven through discounted loans plus the amount subgranted shall not exceed a total of 40% of RLF grant funds awarded. The entities eligible for discounted loans are provided below.

d. To determine whether a cleanup subgrant is appropriate, the CARs must consider:

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 CARs must maintain sufficient records to support and document these determinations.

2. The CARs 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. Ensuring that public participation requirements are met. This includes developing or funding a community relations plan which will include reasonable notice, opportunity for involvement, and response to comments;
d. Establishing an administrative record for each site;
e. 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;
f. The development of Quality Assurance Project Plans (QAPPs) as required by Part 31 and Part 30 regulations;
g. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;
h. 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;
i. For petroleum sites, an analysis of cleanup alternatives would include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures;
j. Using a portion of a loan or subgrant to purchase environmental insurance for the characterization,

assessment or remediation of 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 D.
k. Any other eligible programmatic costs including costs incurred by the CARs in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in section 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 CARs is an eligible programmatic cost.

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

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

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

1. Cooperative agreement funds shall not be used by the CARs, borrowers and/or subgrant recipients for any of the following activities:

a. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
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 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;
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 CAR 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 Part 30 and 40 CFR Part 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 <u>ineligible</u> 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.
vi. 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 <u>ineligible</u> in loans include expenses for:
vii. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
viii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
ix. Supplies and equipment not used directly for cleanup at the site.
x. 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.
xi. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

3. Cooperative agreement funds may <u>not</u> be used for any of the following properties:

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

D. Subgrant Recipient and Borrower 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 non profit organizations as defined at 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.

a. 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.**
b. The CAR may discount loans for those eligible entities identified in CERCLA §104(k)(1) and non profit organizations as defined in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. This definition includes non profit universities and other non profit educational institutions. **Private, for-profit entities are not eligible for discounted loans.**
c. 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 CAR 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.
d. 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 took reasonable steps with regard to the contamination at the site.
e. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.
f. 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.
g. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

E. Obligations for Cooperative Agreement Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA §107

1. CARs, 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 CAR, borrower, or subgrantee. These include, but are not limited to the following:

a. All CARs, 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. CARs, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be:

i. potentially liable, or affiliated with any other person that is potentially liable
ii. for response costs at the facility through (a) any direct or indirect familial
iii. relationship; or (b) any contractual, corporate, or financial relationships; or
iv. a reorganized business entity that was potentially liable or

v. 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 with respect to hazardous substance releases;
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), and 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).

2. Use of Program Income

a. 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 CAR, 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.

OPTIONAL - *for Transitioned RLFs only!*

b. In accordance with section 104(d)(3)(D), when a CAR transitions to a 104(k) cooperative agreement, any program income (e.g. fees, interest or principal repayments) generated prior to transition will be added to the 104(k) agreement and must be used in a manner consistent with section 104(k)(3) and with the terms and conditions, contained herein.
c. 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.
d. The CAR that elects to use program income to cover all or part of a 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 CAR shall reimburse the RLF or the EPA. EPA will notify the CAR of the time period allowed for reimbursement.
e. 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.
f. CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

F. 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.

2. Interest-Bearing Accounts

a. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
b. 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.
c. Interest earned on program income is considered additional program income.

IV. 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 evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.
2. For cleanup of petroleum sites, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The clean up method chosen must be based on this analysis.
3. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the 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 §31.45 (or 40 CFR §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.

a. If cooperative agreement funded environmental sampling takes place, the CAR must prepare a combined Quality Management Plan/Quality Assurance Project Plan (QMP/QAPP.) This combined QMP/QAPP must be prepared in accordance with the EPA Region III Generic Quality Assurance Project Plan (QAPP) Template (dated March 2001). At least 30 days before the initiation of the environmental sampling, the CAR must submit the QAPP to the EPA Project Officer. The EPA Project Officer must approve the CAR's QAPP before the environmental sampling begins.
b. In addition, at least 30 days before the initiation of any site sampling and analysis investigations, the CAR must submit a site-specific Sampling and Analysis Plan (SAP). This site-specific SAP must meet the requirements found in the EPA Region III site-specific SAP Template (dated July 1999). Before sampling and analysis begins, the site-specific Sampling and Analysis Plan must be approved by the EPA Project Officer.

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, opportunity for involvement, response to comments, and administrative records that are available to the public.

D. Administrative Record

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

V. 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.

2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant work plan ***(OPTIONAL: "and RLF implementation plan ")*** has been submitted to and approved by U.S. EPA. *Though the work plan must identify tasks and milestones for establishing and operating the RLF, more detailed information may be submitted in supplemental documents, e.g., an "implementation plan. "* The CAR shall ensure that the objectives of the work plan 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. CARs shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representative 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 section 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 §31.36 or 40 CFR §30.40-30.48, as applicable.

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. CARs may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. DISBURSEMENT, PAYMENT AND CLOSEOUT

1. 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 ensure that all administrative actions and work required under the cooperative agreement have been completed.

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 CAR to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The CAR 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.

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 CAR 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 on the basis of an agreed upon schedule (e.g., progress payments) or, in unusual circumstances, upon execution of the loan. The CAR shall submit documentation of disbursement schedules to EPA.
c. If the disbursement schedule of the loan agreement calls for disbursement of the entire amount of

the loan 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. Further, the CAR shall include an appropriate provision in the loan agreement which ensures that the borrower uses loan 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.

e. The CAR may negotiate a predetermined schedule(s) for disbursement to subgrant recipients provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant recipient's payment of costs incurred in carrying out the subgrant.

f. If the disbursement schedule of the subgrant calls for disbursement of the entire amount of the 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 subgrant. Further, the CAR shall include an appropriate provision in the subgrant agreement which ensures that the subgrant recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

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 cleanups 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 a 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 CERCLA §107 prohibitions and site eligibility limitations contained within these Terms and Conditions.

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 amended to reflect the reduced amount of the cooperative agreement.

E. 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.

OPTIONAL - for the cooperative agreements that will do loan guarantees

F. 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 CAR 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 CAR 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 CAR cannot retain the funds;
ii. the CAR must 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 CAR; 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.