City of Rochester

Request for Proposal

July 7, 2022

Environmental Investigation and Cleanup

42 York Street and 835-855 West Main Street

Rochester, NY

This project is funded through a grant from the U.S. Environmental Protection Agency (EPA)

Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA

Proposals must be received by 4:00 PM

August 3, 2022

Submit Proposals to:

Rick Rynski
Department of Neighborhood and Business Development
Bureau of Business and Housing Development
30 Church Street Room 005A
Rochester, NY 14614

Rick.Rynski@CityofRochester.Gov

TABLE OF CONTENTS

ATTACHEMENTS

REQUEST FOR PROPOSAL

The City of Rochester (City) invites you to submit a proposal to provide comprehensive professional environmental consulting investigation, cleanup, and remediation services for City-owned brownfield property located at 42 York Street and 835-855 West Main Street, Rochester, New York (hereinafter referred to as the "Project"). More information about this RFP can be found via the following webpage links:

Project RFP Webpage
https://www.cityofrochester.gov/BullsHeadEPAMultipurposeRFP/

EPA Multipurpose Grant Project Webpage
https://www.cityofrochester.gov/BullsHeadMultipurposeGrant/

City of Rochester Bid & RFP Webpage
https://www.cityofrochester.gov/bidandrfp/

1.0 INTRODUCTION

1.1 Project Overview

The Project is being performed as part of the City of Rochester's (City's) Multipurpose Grant from the United States Environmental Protection Agency (EPA), and will be funded by the EPA and the City. The Project includes two sites: 42 York Street (**North Site**) and 835-855 West Main Street (**South Site**), collectively the Sites.

The objectives of the Project include completing environmental investigations on both sites and cleanup activities on the North Site. to facilitate future mixed commercial and multi-family residential use. Applicable activities eligible for EPA multipurpose grant funding generally include remedial planning, site investigations & testing, remedial measures and cleanup activities, site restoration, performance monitoring, reports, documentation, and community engagement. The Project activities and selected Consultant are subject to the conditions in the EPA Cooperative Agreement **(see Attachment 1 for the EPA Cooperative Agreement)**.

The selected Consultant shall enter into a Professional Services Agreement (PSA) conditioned on City Council authorization. Assume the City may enter into a Consent Order with the NYSDEC for the Project and does not require any additional legal or other administrative assistance from the selected Consultant. Assume that work plans, fieldwork, and reporting will be completed under the oversight of the Remediation Division of the NYSDEC Region 8. In general, the NYSDEC will be responsible for review and approval of Project-related plans and reports.

1.2 Sites Background & Future Use

The North Site (42 York Street) is a City-owned 0.48-acre parcel within the Bull's Head redevelopment target area, is an unused paved parking lot (formerly residential). The property was acquired by the City in December 2016. A Pre-Development Phase II Environmental Site Assessment and Geotechnical Study Report completed in July 2019 revealed that the site contains fill material with ash layers that are considered non-hazardous industrial regulated waste Heavy metals and semi-volatile organic compounds (SVOCs) are present in the soil/fill material on the site and require off-site disposal at an approved regulated landfill facility. Upon completion of cleanup activities, the site will be sold for redevelopment. Potential future uses include mixed-use commercial and multi-family residential.

The South Site (835-855 West Main Street) is a City-owned 4.22-acre parcel with a partially-occupied approximately 63,000 sf commercial structure (plaza) and a paved parking lot, constructed in the 1950s. Former occupants included laundry, dry cleaning, machine shop, machine manufacturing and auto sales businesses. The property was acquired by the City in October 2018. The approximately 63,000 sf existing structure is the remaining portion of a larger plaza originally built. An approximately 23,000 sf portion of the original plaza (southernmost portion) was recently demolished by the City. Contamination identified at this site includes chlorinated volatile organic compounds (VOCs) in soil and groundwater, perchloroethylene (PCE), as well as heavy metals and SVOCs in fill material and soil. Upon completion of cleanup activities, the site will be sold for redevelopment. Potential future uses include mixed-use commercial and multi-family residential.

2.0 TIMELINE

Activity	Date
RFP Release	July 7, 2022
Deadline for RFP questions	July 20, 2022
Response to RFP questions posted	July 27, 2022
Proposals due	August 3 , 2022
Consultant proposal review, ranking and selection process	August 31, 2021
City Council approval of Professional Services Agreement with Consultant	October 18, 2022
Execution of Professional Services Agreement & Notice to Proceed	October 31, 2022

The dates shown above may be subject to change within the City of Rochester's sole discretion and upon written notification as set forth herein.

3.0 COMMUNICATIONS

All communications by parties who have indicated an intent to submit or have submitted a proposal in response to this RFP ("Respondents"), including any questions or requests for clarifications, submission of the proposal, requests for status updates about the proposal selection process and any other inquiries whatsoever concerning this RFP shall be sent, via email, to:

Rick Rynski, Manager of Special Projects
Rick.Rynski@CityofRochester.Gov

No contact is permitted with any other City staff member with regard to this RFP during the RFP process unless specifically authorized in writing. Prohibited contact may be grounds for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the RFP Project Webpage (see above) for this RFP. The City's failure to timely respond or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

The City will make every reasonable effort to keep Respondents informed about the RFP process. Notifications about timeline date changes, amendments to the RFP and other information about the RFP will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City's project webpage for this RFP. The City's failure to provide such information shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

4.0 PREVIOUS ENVIRONMENTAL STUDIES

Note: Consultants are responsible for reviewing the complete reports prior to proposal submission. Complete copies of all reports described herein this section can be found on the City's webpage for 42 York Street and 835-855 West Main Street:

https://www.cityofrochester.gov/BullsHeadMultipurposeGrant/

4.1 Phase I Environmental Site Assessment(s)

North Site:

Prior to a Phase I Environmental Site Assessment (ESA), 42 York Street was included in an Environmental Screen Report for the Bull's Head Project Area completed in September 2009 by Day Environmental Inc. (Day) on behalf of the City. A Phase I ESA was completed in August 2016 for both 42 York Street and 894-898 West Main Street by Day on behalf of the City. The 2016 DAY Phase I ESA report identified the following recognized environmental conditions (RECs):

In 1988, 1993, and 2003 aerial photographs, approximately 15 vehicles are parked on this property. In addition, apparent dark staining and miscellaneous items, which may be indicative of debris appear to be located throughout this property. The staining and debris on this property may be indicative of current or former industrial/manufacturing use of the property or affects from surrounding properties. Potential concerns associated with an industrial/manufacturing use of a property include the contamination of soil and/or groundwater if leaks/spills and/or improper handling/disposal of hazardous materials, petroleum products, and/or hazardous wastes has occurred.

South Site:

A Phase I ESA was completed in September 2017 for 835-855 West Main Street by LaBella Associates, D.P.C. (LaBella) on behalf of the City. The 2017 LaBella Phase I ESA report identified the following recognized environmental conditions (RECs):

Historic Uses of the Site - based on the review of readily available historical resources, the following potential areas of concern (AOCs) have been identified at the Site:

- 1892: A "nursery" depicted on the northwestern corner of the Site associated with the former orphan asylum. It should be noted that it is unknown if the nursery is associated with young children or plants.
- 1892: A lumber yard and laundry located on the central portion of the Site.
- 1912: A "vegetable house" located on the northern portion of the Site.
- 1912 - 1938: - A "laundry" facility is located on the western portion of the Site.
- 1912 - 1938: A machine shop located on the southwestern portion of the Site. In addition, one (1) gasoline tank was depicted located next to the machine shop on the 1912 Sanborn map.
- 1926: A "laundry" facility on the southwestern portion of the Site.
- 1950: A structure utilized for used auto sales located on the western portion of the Site. In addition, the northern portion of the Site appears undeveloped; however, it is labeled as "used car sales". It is unknown if automobile service and/or repair was performed at the Site as part of the automobile sales operations.

- 1951 – Present day: Developed with Bull's Head Plaza and included the following:
    - In the 2009 Environmental Screen prepared by Day, it stated that the Site, addressed as 6 Genesee Street, was occupied by Beck Cleaners from at least 1953 until at least 1958.
    - 1955: Pratt & Whitney machine manufacturers (845 West Main Street)
    - 1960 – 1985: Bulls Head Laundromat self-serve laundry (36 and 38 Genesee Street)
    - 1965: Westinghouse Dry Cleaners (18 Genesee Street)
    - 1971 - 1984: Cadet Cleaners (847 West Main Street)

Based on the results of a Limited Subsurface Investigation Report prepared by D&B Engineers and Architects (D&B) dated April 28, 2015, PCE was detected in a soil sample collected immediately west of the former Westinghouse dry cleaning operations. Although the concentration of PCE detected was below NYCRR Part 375 Unrestricted Use SCOs, this detection could be indicative of further impacts at the Site.

In addition, hazardous substances and petroleum products were observed onsite in a garage portion of the remaining plaza structure. The usage of the hazardous substances and petroleum products are reportedly unknown. These hazardous substances and petroleum products may have been historically utilized for the service and/or repair of automobiles. In addition, floor drains were observed in the garage. The discharge locations and integrity of the floor drains is reportedly unknown.

It should be noted that it is uncertain if the foundations of structures previously located at the Site are still in place and/or the nature of material that may have been utilized to fill any basements or other subsurface features associated with these former structures.

Historic Use of the Northeastern Adjacent Property - based on the review of readily available historical resources, it appears the northeastern adjacent property has included the following:

- 1935 – 1945: Swan Cleaners Inc. (842 West Main Street)
- 1950: Snyder Jewelers (842 West Main Street)
- 1965: Mr. Filters Inc. Sales oil and industrial filters (850 West Main Street)

Based on the historical usage of the northeastern adjacent property, there is a potential for soil and/or groundwater at the Site to be impacted from the former presence of petroleum products and/or other hazardous substances associated with the former automotive repair shop and used car lot. In addition, based on the historical use of the property as a jeweler, there is the potential for the soil and/or groundwater at the Site to have been impacted from the mercury utilized by the jeweler cleaning operations. In addition, based on the use of this adjacent property

as a "cleaner", it is likely that PCE was utilized in the historical activities at the northeastern adjacent property. Based on the potential for the historical usage of chlorinated solvents (i.e. VOCs) at the northeastern adjacent property, there is the potential for chlorinated solvents (i.e. VOCs) to have been released to the soils and groundwater in the vicinity of the Site.

Historic Use of the Eastern Adjacent Property - based on the review of readily available historical resources, it appears the eastern adjacent property has included the following:

- 1938: Automobile sales (819 West Main Street)
- 1950: Gasoline filling station (819 – 827 West Main Street)

Based on the historical usage of the eastern adjacent property, there is a potential for soil and/or groundwater at the Site to be impacted from the former presence of petroleum products and/or other hazardous substances associated with the former automotive repair shop and used car lot.

Historic Use of the Southwestern Adjacent Property - based on the review of readily available historical resources, it appears the southwestern adjacent property, addressed as 68-92 Genesee Street, was utilized for automobile service and/or repair from at least 1938 until at least at least 1965. The property appears to have been occupied by United Cleaners and Launderers (68 Genesee Street) from at least 1968 until at least 2011.

In addition, LaBella completed a Phase II ESA at the 68-92 Genesee Street property for the City in 2016. The Phase II ESA identified chlorinated solvent impacts in soil and groundwater, with the apparent source in the northeastern portion of this adjacent property. Tetrachloroethylene concentrations were identified in bedrock groundwater at this adjacent property as high as 36 micrograms per liter (mg/l). The source of worst-case impacts appeared to be a former dry well in the northeastern portion of this adjacent property, located within fifty (50) feet of the Site's southwestern property boundary. Two (2) underground storage tanks (USTs) were also identified at this property as part of the Phase II ESA and subsequently removed. Residual petroleum impacts may be present associated with these former USTs.

Lack of Closure Documentation for USTs at the Western Adjacent Property - according to NYSDEC PBS (#8-118117) listing for this adjacent property, two (2), 10,000 gallon fuel oil USTs were reportedly closed at the property in 1996. However, no closure documentation was provided as of the date of the report submission associated with the 10,000 gallon fuel oil USTs.

Based on the lack of closure documentation associated with the two (2), 10,000 gallon fuel oil USTs historically located at this adjacent property, there is a potential for any soil and/or groundwater contamination present at this property to migrate to the Site.

4.2 Phase II Environmental Site Assessment(s)

North Site:

42 York Street was included, among other properties, in a Pre-Development Phase II Environmental Site Assessment and Geotechnical Study Report completed in July 2019 by Day Environmental. The assessment revealed that the site contains fill material with ash layers that are considered non-hazardous industrial regulated waste. Heavy metals and SVOCs are present in the soil/fill material on the site and require off-site disposal at an approved regulated landfill facility.

South Site:

A Phase II ESA was completed in April 2018 for 835-855 West Main Street by LaBella Associates, D.P.C. (LaBella) on behalf of the City. This Phase II ESA was performed to evaluate the Site subsurface based on the historical uses of the Site. The Phase II ESA consisted of the advancement of thirty-three (33) overburden soil borings, installation of nine (9) bedrock groundwater monitoring wells, advancement of seven (7) test pits, laboratory analysis of twenty-nine (29) soil and nine (9) groundwater samples and completion of groundwater flow modeling. A preliminary geotechnical evaluation was also completed. The following conclusions regarding the Site have been made:

- Chlorinated VOCs (primarily PCE) have been detected in soil and groundwater at the Site. These compounds have not been identified in soil above NYCRR Part 375 SCOs; however, they have been identified in three (3) bedrock groundwater samples above NYCRR Part 703 Groundwater Quality Standards. There appear to be at least two (2) potential sources of the chlorinated VOC groundwater impacts identified at the Site:

    1. The former on-site Westinghouse dry cleaning facility previously located in the northern portion of the Site building. PCE was detected in bedrock groundwater at concentrations up to 12,000-ug/L in this location. Although the use of chlorinated VOCs in former dry cleaning operations at this facility has not been confirmed, the presence of these compounds in this area of the Site could be indicative of a release from the former Westinghouse facility.
    2. The former adjacent dry cleaning facility located at 68-92 Genesee Street. Impacts appear to be migrating from this adjacent property onto the Site. PCE was detected in bedrock groundwater at concentrations of 36-ug/L and 5,000 ug/L in locations immediately northwest and southeast of this adjacent property. The highest PCE concentration in bedrock groundwater identified at this adjacent property as part of LaBella's 2016 Phase II ESA for 68-92 Genesee Street was 36,000 ug/L.

- The presence of elevated concentrations of VOCs in the Site subsurface groundwater may present an SVI concern within the Site building and potentially to buildings on surrounding properties.

- Acetone was detected in three (3) groundwater samples above NYCRR Part 703 standards. Although acetone is a common laboratory contaminant, the concentrations of acetone identified in two (2) of these samples combined with slightly elevated concentrations of acetone in soil samples may be indicative of the presence of acetone at elevated levels in the Site subsurface.

- Five (5) soil samples were analyzed for SVOCs; SVOCs were detected at concentrations above Commercial Use SCOs in two (2) locations. Four (4) soil samples were analyzed for metals; mercury was detected above the Commercial Use SCO in one (1) location. Urban fill material was identified in these locations as well as several other locations at the Site in which samples were not analyzed for PAHs or metals. As such, the detections of these compounds at elevated levels may also indicate their presence in fill material elsewhere on Site.

  The presence of urban fill is likely attributed to the historical use of this material as fill, which was common in urban environments in the early and mid-1900's. Compounds commonly found at elevated levels in this material (i.e., heavy metals and PAHs) typically adhere to the soil matrix and are not readily soluble in groundwater. Heavy metals and PAHs typically associated with urban fill were not identified at elevated concentrations in groundwater samples collected at the Site.

- Pesticides were detected in the soil above Unrestricted Use SCOs but don't appear to be a consistent Site-wide issue and may be the result of their use in the region historically. These slightly elevated detections of pesticides were all identified in locations in which urban fill was also encountered.

- Heavy metals including sodium, aluminum, magnesium and/or thallium were identified in groundwater from two wells at concentrations exceeding NYCRR Part 703 standards. The presence of sodium, aluminum and magnesium may represent naturally occurring elevated concentrations of these metals in the region and generally correspond to groundwater data collected from the adjacent 68-92 Genesee Street parcel as part of LaBella's 2016 Phase II ESA at that property. Sodium and magnesium are also common constituents of road salt. Thallium is commonly found in the environment as a byproduct of lead and zinc smelting and also as an ingredient in rat poison (use of thallium-based poison is currently banned in the United States). Based on the lack of thallium identified above laboratory MDLs in the other groundwater samples or soil samples and the relatively high turbidity

measured during sampling, the presence of thallium in this sample may not be representative of dissolved groundwater conditions.

- The Phase II ESA includes an attached Pre-Development Assessment report completed by Foundation Design including a preliminary evaluation of geotechnical conditions at the Site.

5.0 SCOPE OF SERVICES

5.1 Grant Management

The Consultant will assist the City with grant management. This would primarily include the consultant preparing EPA Quarterly and MBE/WBE/DBE reports and performing ACRES database entries. The City will review and approve all reports before submittal to the EPA.

5.2 Citizen Participation Plan (CPP), Community Relations Plan (CRP) & Community Outreach

A Citizen Participation Plan (CPP) generally consistent with NYSDEC Brownfield Cleanup Program CPP Template has already been established for this project. The CPP can be reviewed at the Bull's Head Revitalization webpage at this link:

https://www.cityofrochester.gov/BullsHeadRevitalization/

The Consultant will assist with the implementation of the CPP, including notifications to the public and hosting public meetings via Zoom Video Communications (ZOOM) or another video conferencing software to present and discuss the proposed Project with adjacent property owners, community groups, and other stakeholders. Other CPP related tasks the Consultant will assist with include:

- Providing electronic copies of all reports and other documents to the City, and for placing hard copies of all reports and other documents in the document repository.

- Preparing a draft "Analysis of Brownfields Cleanup Alternatives" (ABCA) by a to be established due date, for review and public comments. The comment period will be thirty (30) days or more from the date of the notice announcing the availability of the document for public review.

- Hosting public meeting(s) via ZOOM or another video conferencing software to present the ABCA and addressing or otherwise responding to the public comments.

The Consultant will prepare a Community Relations Plan (CRP) for this grant. The CRP will be developed to facilitate communication among the residents that surrounding the site, the City and other stakeholders to encourage community involvement in cleanup activities. The CRP will also improve understanding and participation in the cleanup and redevelopment process.

The Consultant will develop a newsletter than will be mailed out no later than 30 days prior to the start of the project. The content of the newsletter will contain all pertinent project information such as site location, history & background, extent of contamination, a proposed schedule, and contact information of all appropriate City personnel. This newsletter will be sent to NYSDEC Region 8 or EPA officials as necessary as well as all adjacent property owners and community stakeholders.

The City will establish a local information repository at the City of Rochester's Arnett Branch Library that includes the USEPA Administrative Record and other public information and reports and will be responsible for posting the same public information on the City's website.

An Advisory Group Committee has already been established for this project. The group was first convened as part of the Brownfields Opportunity Area CPP. The committee consists of individuals representing a variety of stakeholders. As part of this project we are seeking the selected consultant to work with the City to reconvene the advisory group and to facilitate advisory group meetings. The intent is to have Advisory Group Meetings on an annual basis, or in advance of critical moments in the project that would require the committee to meet.

5.3 North Site (42 York Street) Phase II Environmental Site Assessment

As part of this agreement the consultant shall perform a Phase II Environmental Site Assessment (ESA) for the North Site. The purpose of the Phase II ESA is to better define the nature and extent of contamination in order to design appropriate remedial measures. The following scope of work was detailed in the grant application; however, alternatives that accomplish the assessment goals while maximizing grant funds will be considered and should be included in your proposal. The Phase II ESA should include:

- The preparation of a Site Specific Quality Assurance Project Plan (QAPP) Addendum and Health and Safety Plan (HASP) for NYSDEC approval.
- The advancement of test pits throughout the site to observe subsurface conditions, screen soil and/or fill material for the presence of VOC and SVOC contaminants and the collection of up to six soil/fill samples.
- The installation and development of one overburden/bedrock interface groundwater monitoring well.
- The collection and analysis of two groundwater samples: one sample from the newly installed well and one sample from an existing well.

- The laboratory analysis of six soil/fill samples, two groundwater samples and six associated quality assurance/quality control (QA/QC) samples for VOCs, SVOCs and metals.
- Preparation of a Draft and Final Phase II ESA Report detailing the scope of work, the results of observations and laboratory analysis of samples and conclusions. Included in the report is also the results of a third-party data validation of the laboratory analytical results.

5.4 South Site (835-855 W. Main Street) Phase II Environmental Site Assessment

A Phase II ESA is proposed for this site to fill in data gaps from previous assessment efforts. The soil borings and groundwater monitoring wells proposed as part of this assessment plan to be located in the general location of the existing building after it has been demolished. The demolition of the building is not part of this scope and will be funded by the City outside the Multipurpose Grant. The scope of work included in the grant application is detailed below; however, alternatives that accomplish the assessment goals while maximizing grant funds will be considered and should be included in your proposal.

- Preparation of a Site Specific QAPP Addendum and HASP for NYSDEC approval.
- Advancement of soil borings to observe subsurface conditions, screen soil and/or fill material for the presence of VOC and SVOC contaminants and collection of soil/fill samples for laboratory analysis.
- Installation and development of eight bedrock groundwater monitoring wells. Top of bedrock ranges from approximately 4.9 to 6.5-ft bgs, and terminal depths of wells at the site range from 16 to 21.5-ft bgs.
- Collection of groundwater samples from the eight newly installed groundwater monitoring wells and from nine existing monitoring wells.
- Laboratory analysis of 3 soil and 3 groundwater samples along with six associated QA/QC samples for full target compound list/target analyte list (TCL/TAL) including Per- and Polyfluoroalkyl Substances (PFAS) and 1,4-Dioxane.
- Laboratory analysis of 20 soil and 13 groundwater and four associated QA/QC samples for the presence of VOCs.
- Preparation of a Draft and Final Phase II ESA Report detailing the scope of work, the results of observations and laboratory analysis of samples and conclusions. Included in the report is also the results of a third-party data validation of the laboratory analytical results.

5.5 Environmental Cleanup North Site (42 York Street) Property

The following sections detail the scope items that were included in the grant application for the cleanup of this property.

5.5.1 Analysis of Brownfields Cleanup Alternatives (ABCA)

A draft Analysis of Brownfields Cleanup Alternatives will be prepared by the Consultant for the Project. The ABCA discusses and evaluates site characteristics, surrounding environment, land use restrictions, potential future uses, and cleanup goals for both soil and groundwater. The ABCA report includes:

- Information about characteristics of the Site and contamination issues (i.e., identification of type and extent of contaminants, current and future receptors and exposure pathways, sources of contamination, applicable or relevant and appropriate laws or standards, etc.);

- Information and analysis of cleanup alternatives considered for the site, including "no-action" as an alternative;

- Information about the alternatives considered including a range of proven soil and groundwater cleanup methods, presumptive remedies, the proposed cleanup (effectiveness, ability to implement, and the cost of the cleanup alternatives;

- Assess whether land use controls including environmental engineering controls (e.g., fencing, sub-slab vapor mitigation systems for future buildings etc.) or institutional controls will be required.

- As part of this Project, the Consultant shall be responsible for making any revisions to the draft ABCA to ensure that the ABCA is consistent with City and the Consultants proposed scope of remedial work. Once revised, the City will submit the Draft ABCA to the EPA or NYDEC for review and also make the draft ABCA available for review and public comment. The comment period will be thirty (30) days or more from the date of the notice announcing the availability of the document for public review. The Consultant will be responsible for addressing or otherwise responding to the public and NYSDEC comments and finalizing the ABCA report as necessary, and for drafting a memo summarizing the recommended remedy details.

5.5.2 Preparation of USEPA Action Memorandum

An Action Memorandum (memo) summarizing the selected remedy as detailed in the ABCA will be prepared by the selected consultant and submitted to the City for review prior to being sent to USEPA. The decision memo should contain the following:

- Description of the Site and any pertinent history
- Comprehensive list of all environmental site investigations performed
- Summary of cleanup alternatives evaluated; and a description of the alternative chosen

- Summary of environmental impacts identified at the Site
- Explanation of why the cleanup is authorized by the regulatory agency
- Explanation of rationale for selecting that particular action and how the plan for that action meets the specific cleanup goals outlined by the work plan; and how it will conform to applicable, relevant and/or appropriate requirements including federal and state regulations

5.5.3 Remedial Work Plan (RWP) and Environmental Cleanup

The Project will include the development and implementation of a Remedial Work Plan (RWP) to remediate soil and fill materials at the 42 York Street property. The remedial measures in the RWP must be consistent with NYSDEC Part 375 Restricted-Residential SCOs for the future mixed use of the Site as both a commercial and multi-residential property. This may need to be tailored to a Site-specific redevelopment plan if one is identified by the City during the course of the Project. The Consultant will prepare a Draft RWP and submitted to the NYSDEC for comment and/or approval. The draft RWP will be finalized upon addressing any comments that are received. Your firm's proposal should not include a draft RWP; instead the information in this section is provided in order for respondents to better understand the scope of technical requirements required for the project and in order for respondents to prepare a comprehensive proposal.

It is recommended that the Consultants utilize the existing site investigation data and other environmental information regarding Site conditions in an effort to develop an efficient and cost-effective proposal. Details regarding RWP scope requirements are provided below in an effort to allow the Consultants to better prepare a proposal which meets the Project objectives.

The RWP and your proposal must assume a Site specific QAPP, Health and Safety Plan (HASP), and Community Air Monitoring Plan (CAMP) will be required for all intrusive Site activities. In accordance with NYSDEC DER-10, confirmation or documentation samples (e.g., samples taken during the course of a remedial action to determine whether cleanup requirements have been achieved, whether further remediation is required, or taken after remedial action is complete to document the level of contamination remaining) must be by an ELAP-accredited laboratory and in accordance with NYSDEC Analytical Services Protocol Category B Data Deliverables.

The RWP must contain a detailed description of the source removal program elements and procedures to be implemented by the Consultant to address impacted soil, fill materials, and well as any impacted groundwater encountered during the source removal phase of the project. The Consultant must specify the laboratory and field monitoring criteria to be used to determine the extent of the source removal, and should be based in part on analytical results and PID readings, as well as the potential for -contaminated materials to create nuisance vapors and odors. The RWP and your proposal should include a brief discussion of your proposed confirmatory sampling program, as well as backfilling, compaction, and other restoration specifications.

The Consultant will be responsible for implementing the RWP once it has been approved by the City and the NYSDEC and provide comprehensive project oversight of all aspects and phases of the Project. The Consultant will be responsible for retaining and direct payment of all costs incurred by all subcontractors, including contractors, laboratories, disposal facilities, etc. The Consultant is responsible for completing the work in a safe manner and properly securing the Site daily including the perimeter of all excavations. Please note the information provided below is preliminary in nature, and your firm is responsible for defining the specific scope of remedial work to be performed.

5.5.4 Site Preparation Tasks

A 6-foot high temporary chain-link fence with one locked gate will be installed around the perimeter of the Site to prevent public access to the Site during remediation. A USEPA sign will be created and adhered to the chain-link fence with appropriate grant information and agency contact information. The sign will be prepared according to the requirements set forth in the grant Cooperative Agreement. Certain wooden bollards located along York St. will be removed and stored for use at the end of the project.

5.5.5 Contaminated Media Removal from 42 York Street and Disposal at Landfill

The information provided herein this section is based on previous studies, and is provided for information purposes only. The consultant's proposal should include their own assumptions and details regarding the proposed extent of the cleanup.

Previous assessment activities performed on the 42 York St. property revealed the presence of metals and SVOCs exceeding applicable SCOs in two discrete locations. The assumption is that the impacted material is present from the ground surface to an average depth of 4.6 feet below ground surface (bgs). Understanding that the Phase II ESA that is proposed for this site will better define the extent of impact, for cost estimating purposes the City asks the Consultant to assume that 3,500 cubic yards of material will require excavation and offsite disposal.

5.6 Site Restoration

Approximately 3,500 cubic yards of imported geotechnical fill (e.g., crushed stone) will be placed and compacted in the excavation to match existing grade. The 6-foot high chain-link fence with one 20-foot gate and one 6-foot main gate installed around the perimeter of the Site will be removed, and the wood bollards along York Street will be reinstalled as part of site restoration efforts once the project is complete. Assume a cap will be required as the final part of site restoration; the cap should consist of at least 1.5 feet of screened topsoil. The surface will be graded to minimize runoff onto adjacent properties and streets. Assume that if screened topsoil is used that the surface soils will be hydroseeded with grass seed; the grass

must be 2 inches high over 90% of the Site before the Site is considered substantially restored.

5.7 Reporting

As part of the Project a remedial construction/closure report (RCCR) will be completed to document all remedial actions implemented. The final report must include:

- Summary of all remedial work performed
- Field documentation in a field notebook and daily summaries
- Scaled drawings showing the actual limits of excavation(s)
- All quantities (tonnage) of all media disposed of
- Estimate of percent mass in overburden removed
- Figures showing post source removal soil and groundwater exceedances (created in GIS using most recent aerials) * (see below)
- Analytical sampling documentation
- Disposal documentation
- Photographs of the work performed

*The limits of excavation and sample locations must be reported using US State Plane 1983 (New York Western Zone) coordinate system. Assume this report will be submitted to the City and NYSDEC.

5.8 Meetings & Deliverables

The following assumptions meetings should be built into your proposal*:

- Attendance at two neighborhood meetings
- Attendance at two meetings with the NYSDEC or EPA
- Attendance at four meetings with City DEQ
- Daily summary emails to City during the active construction phase of the Project identifying the work completed that day and the work planned for the next day.

  *these meeting requirements may be waived or reduced in light of the NYS social distancing-guidelines related to global COVID-19 pandemic if meetings via ZOOM (or another video conferencing software) cannot be held effectively. Please note that meetings will not take place within City Hall or any other City of Rochester facility under any circumstances as long as NYS social distancing guidelines are still in effect.

Assume that it will be necessary for you to prepare the following deliverables:

- Draft and Final ABCA Report
- EPA Decision Memorandum

- Draft RWP, including a CAMP, HASP, and QAPP
- Final RWP addressing City and NYSDEC comments
- Draft Remedial Construction / Closure Report
- Final Remedial Construction / Closure Report addressing City and EPA/DEC comments

6.0 PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be emailed to Rick Rynski at Rick.Rynski@cityofrochester.gov as a PDF document no later than **Wednesday, August 3, 2022 at 4:00pm**.

As an alternative to emailing the proposal, Respondents may submit their proposal as a PDF document on flash/thumb drive in an envelope no later than **Wednesday, August 3, 2022 at 4:00pm**, addressed to:

- **Rick Rynski, Manager of Special Projects**
  City of Rochester
  Department of Neighborhood and Business Development
  30 Church Street Room 005A
  Rochester, NY 14614

This RFP is designed to facilitate the evaluation and selection of a Consultant that is best able to achieve the City's objectives. The proposal shall contain a table of contents. The proposal shall be paginated; major sections and all attachments shall be referenced in the table of contents. In order to enable the City to effectively review the information contained in the proposals, proposals shall reference the numbered and lettered sections of the RFP. The response to each section shall be clearly indicated and addressed or an explanation provided for why the Respondent is not submitting a proposal for a specific section or requirement of the RFP. If desired, the proposal may include an executive summary of no more than one page.

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its proposal, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFP.

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City **(see Attachment 2 for the City's standard PSA form)**. A new PSA, with specific terms and conditions relevant to the Project and the selected

consultant, will be developed upon the selection of a proposal by the City. The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of $10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this PSA. (Note: Attention is directed to the City's Living Wage requirements and MWBE and Workforce Utilization Goals).

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the responding Respondents or to conduct the Project described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

7.0 PROPOSAL CONTENT

The proposal should include the following information in the order specified:

A. Project Statement: A Project narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the process.

B. Description of Services: Methodology the Respondent will use to perform the services required in this RFP. The proposal should address, in detail, the tasks as described in the Scope of Services, identified by numbered or lettered sections.

C. Respondent's Qualifications: The Respondent must document experience with past environmental investigations and cleanups, and specifically EPA funded investigations and cleanups. Include information about prior environmental cleanup projects similar to that being solicited herein by the City. Documented evidence of the Respondent's capacity to perform the work, including at least references, contact names, and phone numbers is required.

D. Project Budget: An itemized budget including staff hours and billing rates which addresses each of the tasks identified in the Scope of Services.

E. Project Schedule: A schedule detailing the sequence of project tasks and deliverables with an assumed start date of November 2022. Because the demolition of Bull's Head Plaza is necessary before the execution of the Phase II ESA at 835-855 West Main St., assume the Phase II ESA and subsequent cleanup at 42 York St. will be completed prior to the Phase II ESA at 835-855 West Main St.

F. Project Personnel: Specify the names and resumes of the Respondent's lead person(s) for the Project. Names, resumes, and roles of all staff who will be involved in the Project. Include an organization chart. Provide data on the diversity of Respondent's overall workforce, including total number of employees, and percentages of minorities and females employed. A copy of the City's Workforce Utilization form that will be required from the selected consultant is attached **(see Attachment 3 for the City's Workforce Plan)**.

G. Subcontractors: Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Project. Include all subcontractors on the organization chart.

H. Rochester Presence: Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project.

I. MWBE: Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Consultant's workforce and that of any subcontractors who will be utilized **(see Attachment 3 for the City's MWBE Utilization Plan)**.

8.0 EVALUATION CRITERIA

The following is a summary of the proposal evaluation criteria. It is within the City's sole discretion to determine the value assigned to each of these criteria.

Proposals will be evaluated by City Division of Environmental Quality (DEQ) and City Neighborhood and Business Development (NBD) staff based on a combination of demonstrated understanding of the USEPA brownfield cleanup and assessment grant programs and this specific project; prior experience on similar projects; project personnel qualifications; and the competitiveness of the proposed costs. Each of the following will be weighted approximately equally in the evaluation process:

- Proposal: The Respondent's comprehension of the needs of the City as demonstrated by its description of its approach to the elements listed in the Scope of Services section of this RFP.

- Experience: The Respondent's relevant experience in providing the same or similar services.

- Cost: The total cost of the Respondent's proposal is important to the City, however, based on the evaluation of the other criteria, the City will not necessarily select the lowest bidder. **The total cost of the Respondent's proposal must be within the grant budget of $760,000.**

- References: Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.

- Commitment of key principals to the Project: Demonstration of availability of senior-level staff or associates to be assigned to this Project to ensure depth, accountability, and diversity of perspective.

- MWBE and Workforce Goals: The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into PSAs with the City and to encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over $10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20% M and 6.9% W for professional services consulting contracts. Respondents shall be awarded MWBE bonus weighting as follows:

    1. The City will give preference to Consultants who are New York State certified MWBE's with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. Consultants who meet this requirement shall receive **an additional weighting of 10%.**
    2. The City will give preference to Consultants who utilize state certified MWBE subcontractors. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the consultant shall receive **an additional weighting of 5%.** If MWBE subcontractors will perform more than 20% of the work of the contract, the Consultant shall receive an **additional weighting of 10%.**
    3. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the PSA.
    4. The City will give preference to Consultants who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that their workforce meets or exceeds these goals shall receive an **additional weighting of 10%.** If selected, the Respondent shall submit a Workforce Staffing Plan on the City's Form for approval by the MWBE Officer.

Once approved, the Workforce Staffing Plan shall be incorporated into the PSA.

5. Respondents must certify in their proposal that, if selected, they will provide MWBE, subcontractor/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice for service provided or as otherwise requested by the MWBE Officer.
6. Respondents must further certify in their proposal that, if selected, they understand that a failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the approved MWBE Utilization Plan and/or Workforce Staffing Plan (Attached) for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.
7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

Category of Additional Evaluation Points	**Additional Weight Awarded**
Respondent is an MWBE	10%
Utilize MWBE Subcontractors for 10-20% of work	5%
Utilize MWBE Subcontractors for more than 20% of work	10%
Meet or exceed workforce goals of 20% M and 6.9% W	10%

MBE/WBE businesses which can be sourced from the following NYS Unified Certification Program Directory located at the following link or can be accessed through the City of Rochester MWBE webpage.

https://nysucp.newnycontracts.com/Default.asp

www.cityofrochester.gov/mwbe

The term of the agreement will be for the grant period of performance which terminates 9/30/2026. The selection of a Consultant is within the City's sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further

reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City's best interest.

9.0 MISCELLANEOUS

The City reserves the right to amend or withdraw this RFP in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.

The City may request additional information from any Respondent to assist the City in making its evaluation.

The proposal and all materials submitted with the proposal shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted with the proposal, it must be clearly identified and a request to keep such information confidential must be submitted.

Submission of a proposal shall constitute a binding offer by Respondent to provide the services at the prices described therein until such time as the parties enter into a PSA.

END OF RFP

ATTACHMENTS FOLLOW

Attachment 1

EPA Cooperative Agreement

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 96242500 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** BF	**DATE OF AWARD** 09/29/2021
TYPE OF ACTION New	**MAILING DATE** 10/06/2021
PAYMENT METHOD: Advance	**ACH#** 20021

RECIPIENT TYPE:
Municipal

Send Payment Request to:
RTP Finance Center

RECIPIENT:
City of Rochester New York
30 Church St.
Rochester, NY 14614
EIN: 16-6002551

PAYEE:
City of Rochester, New York
30 Church Street
Rochester, NY 14614

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Rick Rynski 30 Church Street City Hall - Room 005A Rochester, NY 14614-1290 **E-Mail:** Rick.Rynski@cityofrochester.gov **Phone:** 585-428-6932	John Struble 290 Broadway, LCRD/LRPB New York, NY 10007 **E-Mail:** Struble.John@epa.gov **Phone:** 212-637-4291	Kelsey Steele Grants and Audit Management Branch, 290 Broadway New York, NY 10007 **E-Mail:** steele.kelsey@epa.gov **Phone:** 212-637-3457

PROJECT TITLE AND DESCRIPTION

City of Rochester Multipurpose Grant Program

This agreement will provide funding for the City of Rochester, New York to conduct a range of activities associated with the planning, assessment, and clean up of brownfield sits in the City of Rochester, New York. Grant funds will be used to conduct a Phase II environmental site assessment at the Bull's Head Plaza on West Main Street and conduct a Phase II environmental site assessment and clean up at the 42 York Street property. The target area is the 185-acre area Bull's Head neighborhood, a key historic gateway to Rochester that has been a focus of the city's revitalization efforts with over a decade of community-based revitalization planning. Grant funds also will be used to conduct community outreach activities which will benefit residents and stakeholders in the City of Rochester, New York.. Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2021 - 09/30/2026	10/01/2021 - 09/30/2026	$840,000.00	$840,000.00

NOTICE OF AWARD

Based on your Application dated 10/27/2020 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $800,000.00. EPA agrees to cost-share 95.24% of all approved budget period costs incurred, up to and not exceeding total federal funding of $800,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866	U.S. EPA, Region 2, Land, Chemicals and Redevelopment Division R2 - Region 2 290 Broadway New York, NY 10007-1866

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

Digital signature applied by EPA Award Official Donald Pace - Director	**DATE** 09/29/2021

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$0	$800,000	$800,000
EPA In-Kind Amount	$0	$0	$0
Unexpended Prior Year Balance	$0	$0	$0
Other Federal Funds	$0	$0	$0
Recipient Contribution	$0	$40,000	$40,000
State Contribution	$0	$0	$0
Local Contribution	$0	$0	$0
Other Contribution	$0	$0	$0
Allowable Project Cost	$0	$840,000	$840,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(4) & 104(k)(5)(E)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Oganization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2102HE0208	21	E4	02X0AG7	000D79	4114	-	-	$800,000
									$800,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$24,126
2. Fringe Benefits	$13,559
3. Travel	$1,750
4. Equipment	$0
5. Supplies	$0
6. Contractual	$800,000
7. Construction	$0
8. Other	$565
9. Total Direct Charges	$840,000
10. Indirect Costs: 0.00 % Base	$0
11. Total (Share: Recipient 4.76 % Federal 95.24 %)	$840,000
12. Total Approved Assistance Amount	$800,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$800,000
15. Total EPA Amount Awarded To Date	$800,000

Administrative Conditions

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-or-later.

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

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

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. Correspondence Condition

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

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov; Region2_GrantApplicationBox@epa.gov and the Grants Specialist of record for this agreement.
- MBE/WBE reports (EPA Form 5700-52A): Region2_GrantApplicationBox@epa.gov and the Grants Specialist of record for this agreement.
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Region2_GrantApplicationBox@epa.gov; the Grants Specialist of record for this agreement and the Project Officer of record for this agreement.
- Payment requests (if applicable): Region2_GrantApplicationBox@epa.gov; the Grants Specialist of record for this agreement and the Project Officer of record for this agreement.
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Project Officer of record for this agreement.

Programmatic Conditions

GRANT-SPECIFIC PROGRAMMATIC CONDITIONS

FY21 Multipurpose Cooperative Agreement

Terms and Conditions

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

I. GENERAL FEDERAL REQUIREMENTS

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

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2021 competition for Brownfield Multipurpose cooperative agreements.

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

3. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements.

4. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). Assessment activities generally do not involve construction, alteration, and repair within the meaning of the Davis-Bacon Act. However, the recipient must contact the EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicate that the Davis-Bacon Act applies to an activity the CAR intends to

carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary. Cleanup activities are likely to require Davis-Bacon compliance. For more detailed information on complying with Davis-Bacon, please see the Davis-Bacon Addendum to these terms and conditions.

Davis-Bacon Terms and Conditions For Cooperative Agreements to Governmental Entities

DAVIS-BACON PREVAILING WAGE TERM AND CONDITION

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

1. Applicability of the Davis-Bacon Prevailing Wage Requirements

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

Hazardous substances contamination:

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

Petroleum contamination:

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

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

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

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

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

2. Obtaining Wage Determinations

(a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain proposed wage determinations for specific localities at https://beta.sam.gov/.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

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

(1) Minimum wages.

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

hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30

days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

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

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

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

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

(2) Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at https://www.dol.gov/whd/forms/wh347.pdf or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

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

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

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

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

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

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

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

pursuant to 29 CFR 5.12.

(3) Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for

the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(9) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent

documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

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

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

II. SITE ELIGIBILITY REQUIREMENTS

A. Eligible Brownfield Site Determinations

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

2. The CAR must provide information to the EPA Project Officer 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 workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined

in CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability and/or has defenses to CERCLA liability, and documentation that the CAR owns the site it intends to clean up.

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

4. Brownfield Sites Contaminated with Petroleum

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

i. the State determines there is "no viable responsible party" for the site;

ii .the State determines that the person addressing the site is a person who is not potentially liable for cleaning up the site; and

iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

i. the identity of the State program official contacted;

ii. the State official's telephone number;

iii. the date of the contact; and

a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person addressing the site is not potentially liable for cleaning up the site.

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

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

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151).

Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the determinations described in Section II.A.4.b. above.

B. Continuing Obligations for CARs

1. The CAR shall not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA § 107. The CAR must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

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

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

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

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

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

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

f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.

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

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

Notwithstanding the CAR’s continuing obligations under this agreement, the CAR is subject to the applicable liability

provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

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

III. GENERAL COOPERATIVE AGREEMENT

ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Sufficient Progress Condition (No. 27) in the General Terms and Conditions. If after 2 years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances. Sufficient progress is indicated when 35% of funds have been drawn down and disbursed for eligible activities and when sites are prioritized or an inventory has been initiated (if necessary), initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed, an appropriate remediation plan is in place for at least one eligible brownfield site, institutional control development (if necessary) has commenced, institutional control development (if necessary) has commenced, and/or a solicitation for services has been issued.

B. Substantial Involvement

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts. EPA will not direct or recommend that the CAR enter into a contract with a particular entity.

b. Substantial EPA involvement includes brownfield eligibility determinations (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward for site assessment and/or cleanup. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow the subrecipient to use EPA cooperative agreement funds to address a site for which the subrecipient is potentially liable under CERCLA § 107.)

c. Substantial EPA involvement may include reviewing financial and program performance reports, monitoring all reporting, record-keeping, and other program requirements.

d. EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers in writing.

2. Effects of EPA's substantial involvement include:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.

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

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

C. Cooperative Agreement Recipient Roles and Responsibilities

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

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

3. The CAR is responsible for ensuring that funding received under this cooperative agreement does not exceed the statutory $200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be submitted to the EPA Project Officer and approved prior to the expenditure of funding exceeding $200,000. In no case may funding for site-specific assessment activities exceed $350,000 on a site receiving a waiver.

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

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

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no

later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

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

6. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:

a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Multipurpose cooperative agreement, including the required cost share, and related activities completed with other sources of leveraged funding.

b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.

c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.

d. An update on the project schedule and milestones, including an explanation of any discrepancies from

the EPA-approved workplan.

e. A list of the properties where assessment, cleanup, and planning activities were performed and/or completed during the reporting quarter.

f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); cost share contributions; program income generated and used (if applicable); and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information.

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

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

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

E. Property Profile Submission

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

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*, 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement via email; unless the EPA Project Officer agrees to accept a paper copy of the report. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:

a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;

b. reasons why anticipated outputs/outcomes were not met; and

c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. Brownfield Multipurpose cooperative agreements require the recipient 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 unless a Federal statute provides otherwise) of $40,000. The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement, be supported by adequate documentation, and otherwise comply with 2 CFR § 200.306. The recipient may use allowable administrative costs borne by the recipient or a third party to meet its cost share obligation, including indirect costs, subject to the 5% limit on administrative costs described in the Administrative Cost clause in Section IV. Administrative costs, whether paid for by EPA or used as cost share (or a combination of both), shall not exceed the 5% limit.

B. Transfer of Funds

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

C. Eligible Uses of the Funds for the Cooperative Agreement Recipient

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

a. Determining whether assessment and cleanup activities at a particular site are authorized by CERCLA § 104(k).

b. Ensuring that an assessment and cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).

c. Limited Site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.

d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.

e. Ensuring that public participation requirements are met. This includes preparing a Community Relations Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.

f. Establishing an Administrative Record.

g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in *Implementation of Quality Assurance Requirements for Organizations*

Receiving EPA Financial Assistance available at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

h. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment, or remediation of the site. Funds shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient.*

i. Any other eligible programmatic costs, including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and managing subawards to the extent required to comply with 2 CFR § 200.332 and the "Establishing and Managing Subawards" General Term and Condition; and carrying out community involvement pertaining to the assessment and cleanup activities.

2. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted and is contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

3. Under CERCLA § 104(k)(5)(E), CARs and subrecipients may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is **$40,000**. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement, or used to meet the recipient's cost share, shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. The term "administrative costs" does not include:

a. Investigation and identification of the extent of contamination of a brownfield site;

b. design and performance of a response action; or

c. monitoring of a natural resource.

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

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

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

ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;

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

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

v. Financial reporting under 2 CFR § 200.328;

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

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

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

D. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

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

b. Construction, demolition, and site development activities that are not brownfield assessment activities or cleanup actions (e.g., marketing of property (activities or products created specifically to attract buyers or investors), construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);

c. General community visioning, area-wide zoning updates, design guideline development, master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates – these activities are all ineligible uses of grant funds if unrelated to advancing cleanup and reuse of brownfield sites within the target area. Note: for these types of activities to be an eligible use of grant funds, there must be a specific nexus between the activity and how it will help further cleanup and reuse of the priority brownfield sites. This nexus must be clearly described in the workplan for the project;

d. Job training activities unrelated to performing a specific assessment at a site covered by the cooperative agreement;

e. To pay for a penalty or fine;

f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;

g. To pay for a response cost at a brownfield site for which the CAR or subaward recipient is potentially liable under CERCLA § 107;

h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and

i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

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

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

E. Interest-Bearing Accounts and Program Income

1. In accordance with 2 CFR § 1500.8(b), during the performance period of the cooperative agreement, the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement. CARs that intend to use program income for cost share under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award.

2. Program income for the CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, cleanup planning, clean up activities, or other activities when the costs for the activities are charged to this agreement.

3. The CAR must deposit advances of cooperative agreement funds and program income (i.e., fees) in an interest-bearing account.

a. For interest earned on advances, CARs are subject to the provisions of 2 CFR § 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.

b. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 2 CFR § 200.307 and 2 CFR § 1500.8, as applicable.

c. Interest earned on program income is considered additional program income.

d. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 2 CFR § 200.305(b)(5).

4. As required by 2 CFR § 200.302, the CAR must maintain accounting records documenting the receipt and disbursement of program income.

5. The recipient must provide as part of its quarterly performance report and final technical report a description of

how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the quarterly performance report, final technical report, and Federal Financial Report (Standard Form 425).

V. MULTIPURPOSE REQUIREMENTS

A. Authorized Activities

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfield assessment and cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 60 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans.

No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP. Additional information

on these requirements can be found at the EPA Office of Grants and Debarment website at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

2. Competency of Organizations Generating Environmental Measurement Data:

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

C. Community Relations, Public Involvement, and Community Outreach

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

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

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

b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with a direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients.

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

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

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all appropriate inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-13 *"Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*," or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in *"All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content"* (Publication Number: EPA 560-F-14-003). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable state standards.

2. AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to the EPA Project Officer as deliverables under this agreement must be accompanied by a completed *"All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients"* (Publication Number: EPA 560-F-17-194) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA's website at www.epa.gov/brownfields. The completed checklist must include:

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

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

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

-- ''[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in 40 CFR § 312.10 of this part.''

-- ''[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.''

Note: Please use either "I/my" or "We/our."

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

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation

requirements at 40 CFR Part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR § 200.339. If a recipient willfully fails to correct the deficiencies EPA may consider other available remedies under 2 CFR § 200.339 and 2 CFR § 200.343.

E. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanup is complete. The CAR shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination.

F. Implementation of Cleanup Activities

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented.

2. If the CAR is unable or unwilling to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

G. Completion of Assessment and Cleanup Activities

1. The CAR shall properly document the completion of all activities described in the EPA- approved workplan. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows assessments and cleanups are complete. Documentation of completed the completed cleanups must be included as part of the Administrative Record.

H. Inclusion of Additional Terms and Conditions

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

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

VI. PAYMENT AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the

CAR; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

A. Payment Schedule

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

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

B. Schedule for Closeout

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

2. The CAR, within 120 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement 2 CFR Part 200.

a. The CAR must submit the following documentation:

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

ii. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.

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

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

Attachment 2

City's PSA Form

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name:
Project Code:
Consultant Name:
Agreement #:
Authorizing Ordinance:

I N D E X

ARTICLE II

AGREEMENT

THIS AGREEMENT, entered into on the ___ day of _____, 200_, by and between the CITY OF ROCHESTER, a municipal corporation having its principal office located at CITY HALL, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City", and _____ with offices at _____, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, the City desires to secure the professional services of the Consultant to_____, hereinafter referred to as the Project and;

WHEREAS, the Consultant covenants that it has the personnel, skills and expertise required and wishes to undertake the Project.

NOW THEREFORE, the City and the Consultant do mutually agree, in consideration of the covenants, terms and conditions contained herein, as follows:

ARTICLE I, Part 1. Description of Project

Section 1.101 General Description

ARTICLE I, Part 2. Description of Professional Services

Section 1.201 General

The Consultant shall provide the following services:

A.

B. The Consultant is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. The Consultant shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. The Consultant shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City.

C. The Consultant shall maintain an up-to-date, orderly, assembled file of Project notes and records. Notes shall include correspondence, calculations, documentation, references and other material necessary for the completion of the Project.

D. The Consultant is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. The Consultant bears all responsibility for any errors, omissions or other deficiencies in the Consultant's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.

E. The Consultant's obligations under this Section are in addition to the Consultant's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the City may have against the Consultant for faulty materials, equipment or work.

F. The Consultant shall furnish promptly all equipment, labor and materials needed to perform in a safe and convenient manner, such inspections as the City requires.

H. The Consultant shall keep the City informed of the progress of the work so that the City may inspect the Consultant's work as determined necessary by the City. In particular, the Consultant shall provide the City with at least forty-eight (48) hours notice prior to performing work which would prevent proper inspection of previously completed work.

I. The Consultant shall meet with the City at the City's request to discuss the Assessment results and recommendations as may be deemed necessary by the City.

Section 1.202 Additional Services (if applicable)

ARTICLE I, Part 3. Subcontracts

All services to be performed under this Agreement shall be performed with the Consultant's own employees, unless the City agrees that the Consultant may subcontract such services. Copies of all proposed Agreements between the Consultant and subcontractors shall be submitted to the City along with a statement of the subcontractor's qualifications. Such Agreements shall be approved by the City in writing prior to initiation of work. All subcontracts under

this Agreement are subject to all applicable provisions of this Agreement unless otherwise directed in writing by the City. The Consultant is responsible for the completion of all services under this Agreement in an acceptable and timely manner, including any services performed by a subcontractor, supplier or other party with whom the Consultant has a contract.

ARTICLE I, Part 4. City Responsibilities

The City shall:

A. Provide as complete information as is reasonably possible as to its requirements for the Project to the Consultant.

B. Assist the Consultant by making available to the Consultant any information pertinent to the Project, including previous reports and any other relevant data.

C. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented to the City by the Consultant for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of the Consultant.

D. Designate a representative (Authorized Agent) to act as liaison between the City and the Consultant. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the City policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.

E. Give written notice to the Consultant where the City observes or otherwise becomes aware of any default in the Consultant's performance hereunder or where the City does not concur with the design or other recommendations of the Consultant.

F. Obtain any required easements with the assistance of the Consultant.

G. Obtain or provide in a timely manner permission for the Consultant to enter upon any sites, buildings, and facilities as deemed necessary by the Consultant to perform the services required pursuant to this Agreement.

ARTICLE I, Part 5. Fees

Section 1.501 General

A. In no event whatsoever shall the total fee payable to the Consultant pursuant to this Agreement, including all costs and disbursements whatsoever, exceed $.

B. The Consultant shall have the right to bill the City for services performed and not already billed on a (monthly basis) (upon completion of all work required under this Agreement) (upon completion of).

C. Payment Request

The Consultant shall submit an invoice and any other supporting documentation in the manner prescribed by the City at a minimum of once every ninety (90) days during the term of the agreement unless a different schedule is approved by the City.

ARTICLE I, Part 6. Term

This Agreement shall commence (upon execution by the parties) (on DATE) and shall terminate (one year from such date) (on DATE).

ARTICLE I, Part 7. Removal of Personnel

All personnel assigned by the Consultant shall be subject to the approval of the City and be required to cooperate with the City project personnel. In the event that the Consultant's personnel fail to cooperate or perform their assigned tasks in a reasonable manner as determined by the City, the City may require the Consultant to replace such personnel.

ARTICLE I, Part 8. Authorized Agent

A. The City hereby designates the:

[Title]
[Department]
30 Church Street
Rochester, New York 14614-1278

B. The Consultant hereby designates:

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agents designated herein.

The parties reserve the right to designate other or additional Authorized Agents upon written notice to the other.

ARTICLE I, Part 9. Ownership of Documents

All original notes, drawings, specifications and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.

ARTICLE I, Part 10. Confidentiality

Section 1.1001 General

The Consultant agrees that any and all data, analyses, materials or other information, oral or written, made available to the Consultant with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the Consultant with respect to this Agreement shall, except for information which has been or is publicly available, be treated as confidential; and shall not be utilized, released, published or disclosed by the Consultant at any time for any purpose whatsoever other than to provide consultation or other services to the City.

Section 1.1002 Freedom of Information Law

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should Consultant provide the City with any records it deems confidential and exempt from FOIL, Consultant shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform Consultant of the request and give Consultant ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records must be disclosed, Consultant may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to Consultant's appeal within ten (10) business days. If the City issues an adverse determination, Consultant may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

ARTICLE I, Part 11. Organizational Conflict of Interest

A. The Consultant warrants that to the best of the Consultant's knowledge and belief, there are not relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Consultant has disclosed all such relevant information.

B. An organizational conflict of interest exists when the Consultant performs or agrees to perform services for another party that could foreseeable implicate the City as a potentially responsible party in an environmental enforcement action or claim against the City or otherwise increase the potential liability of the City.

C. The Consultant agrees that if an actual or potential organizational conflict of interest is discovered, the Consultant will make a full disclosure as soon as possible in writing to the City. This disclosure shall include a description of actions which the Consultant has taken or proposed to take, after consultation with the City, to avoid, mitigate, or neutralize the actual or potential conflict.

D. The City may terminate this Agreement in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Consultant was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose it, or misrepresented relevant information to the City, the City may terminate the Agreement, debar the Consultant from contracting with the City, or pursue such other remedies as may be permitted by law or this Agreement. In such event, termination of this Agreement shall be deemed a termination for default pursuant to Section 2.602.

E. The Consultant further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this Article.

ARTICLE II

ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits

A. The Consultant hereby agrees that it has, or will have, on its staff and will retain during the performance of this service under this Agreement, all appropriate professional personnel necessary to completely and accurately perform the work and services under this Agreement.

B. The Consultant further agrees that the design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.

C. The Consultant further agrees to insure that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

Section 2.102 Consultant's Liability

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Consultant, its employees, agents or subcontractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the Consultant shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

Section 2.103 Professional Liability Insurance

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omissions of the Consultant, in the amount of One Million Dollars. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the

cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days' notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

Section 2.104 General Liability Insurance

The Consultant shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall be in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the policy must be endorsed to provide that there shall be no right of subrogation against the City and Consultant shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

Section 2.105 Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall require all the Consultant's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Consultant hires its own employees to do any work called for by this Agreement, then the Consultant agrees to so insure its own employees. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured, as well as a Waiver of Subrogation Form WC 00 03 13 or City approved equivalent. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the Consultant with at least thirty (30) days written notice of such cancellation or modification and Consultant shall immediately notify City of such notice of cancellation. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

Section 2.106 Pollution Liability Insurance

If this Agreement involves handling, disturbing, removing or potential exposure to hazardous substance as defined herein, Consultant shall obtain pollution liability insurance coverage in the amount of at least One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) in the aggregate. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification.

"Hazardous Substance" means, without limitation, any flammable explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law or any other currently applicable Environmental Law and the regulations promulgated thereunder.

Section 2.107 Umbrella Liability Insurance

If Consultant is required to have Pollution Liability Insurance, Contractor is required to have an Umbrella policy with a minimum limit of Four Million Dollars ($4,000,000). Such umbrella policy shall be on a following form basis. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Such coverage must be endorsed to provide that there shall be no right of subrogation against the City. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the Consultant with at least thirty (30) days written notice of such cancellation or modification and Consultant shall immediately notify City in writing of such notice of cancellation.

Section 2.108 Automobile Liability Insurance

If vehicles are used in the provision of services under this Agreement, then the Consultant shall obtain at its own expense business automobile liability insurance in the amount of at least One Million Dollars ($1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owner, or hire vehicles to be used in connection with this Agreement. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. Such coverage must be endorsed to provide that there shall be no right of subrogation against the City. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01 and stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification.

If vehicles are used for transporting hazardous materials, the business automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered autos (endorsement CA 99 48), as well as proof of the Motor Carrier Act endorsement MCS-90.

Section 2.109 Copyright or Patent Infringement

The Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom, providing however, that the City within ten days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the Consultant in writing.

Section 2.110 No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City.

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

The City has an obligation to assess the environmental impact of the Project and to prepare any necessary state, federal, and/or local environmental impact statements under the State Environmental Quality Review Act and the national Environmental Protection Act. The City wishes to enhance the environment by minimizing environmental degradation and by maximizing the Project benefits.

The Consultant, therefore, shall assist the City in determining whether environmental impact statements ("EIS") should be prepared and shall assist the City or the City's Environmental Specialist in preparing any necessary EIS. The

Consultant shall not be required to prepare an EIS, unless specifically required by Article I of this Agreement.

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment Opportunity and MWBE and Workforce Utilization Goals

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of handicap status in admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

MINORITY GROUP PERSONS - shall mean a person of Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native ethnic or racial origin and identity.

C. Compliance

The Consultant shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability or marital status discriminate against any person who is qualified and available to

perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship.

2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.

3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

D. MWBE and Workforce Utilization Goals

The City of Rochester has established a policy to promote the growth and development of Minority and Women Business Enterprises (MWBE) and to improve employment opportunities for minorities and women and has adopted MWBE goals and minority workforce participation goals that

apply to public works and professional services consulting agreements with a maximum compensation exceeding $10,000 pursuant to Ordinance No. 2018-54.

Ordinance No. 2018-54 established the goal that MWBE's receive 30% of the total annual contract awards with aggregate minority and women award goals of 15% each. Ordinance No. 2018-54 further established annual aggregate workforce goals of 20% Minority and 6.9% Women.

The Consultant shall submit a workforce staffing plan, which, when reviewed by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit A, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either minority or women, including both the Consultant's workforce and that of any subcontractors who will be utilized. Consultant shall submit workforce utilization reports on the City's forms with each invoice or as otherwise requested by the MWBE Officer. The Consultant understands and accepts that the calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.

The Consultant shall submit an MWBE Utilization Plan with respect to any subcontractors or suppliers used to perform the services under this Agreement, which, when approved by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit B. Consultant shall submit MWBE utilization and subcontractor/supplier payment certification on the City's forms with each invoice or as otherwise requested by the MWBE Officer.

During the term of the Agreement, the Consultant shall notify the City if a change occurs that will result in a significant (5% or more) increase or decrease in the workforce staffing plan and/or MWBE utilization plan goals incorporated as Exhibit A and/or Exhibit B of this Agreement. A revised workforce staffing plan and/or MWBE utilization plan must be approved by the MWBE Officer. Once signed by the Consultant and the MWBE Officer, such revised plan(s) shall be incorporated into the Agreement as an amendment pursuant to Section 2.707.

Consultant's failure to submit MWBE and subcontractor/supplier payment certification forms, if required, and the workforce utilization reports shall constitute a default in the performance of this Agreement. Failure to meet the goals stated in the most recent workforce staffing plan and/or the MWBE utilization plan incorporated into the Agreement may result in disqualification from award of future contracts with the City.

Section 2.302 Title VI of the Civil Rights Act of 1964

The City of Rochester hereby gives public notice that it is Municipality's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Municipality receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with Municipality. Any such complaint shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

Section 2.303 The MacBride Principles

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride principles. A copy of the MacBride principles is on file in the Office of the Director of Finance.

Section 2.304 Compliance with Labor Laws

The Consultant specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Consultant shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Consultant has unlawfully discriminated because of the race, color,

creed, national origin, sex or age of any applicant for employment or any employees.

Section 2.305 Living Wage Requirements

A. Applicability of Living Wage Requirements

This section shall apply and the Consultant shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance", in the event that payments by the City to the Consultant under this Agreement shall exceed fifty thousand dollars ($50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to more than fifty thousand dollars ($50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov. Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

A. The Consultant, and its subcontractors warrant that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

B. The Consultant promises to comply with all of the requirements of Sections 144 of the Clean Air Act, as amended (47 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to the inspection, monitoring, entry, reports and information as well as all other requirements specified in Section 114 and Section 308, and all regulations and guidelines issued thereunder.

C. A condition for the award of the Agreement is that prompt notice will be given to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Agreement is under consideration to be listed on the EPA list of Violating Facilities.

D. The Consultant warrants to the City that it has not been convicted under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

Section 2.402 Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used during the performance of the Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Section 2.403 Lobbying Prohibited

None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, the Legislature of the State of New York or the Council of the City of Rochester.

Section 2.404 Anti-Kickback Rules

Salaries of employees performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 108; title 18 U.S.C., section 874; and title 40 U.S.C., section 276c). The Consultant shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to insure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

Section 2.405 Withholding of Salaries

If, in the performance of this Agreement, there is notice to the City of any underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of the Consultant or subcontractor to the respective employees to whom they are due.

Section 2.406 Discrimination Because of Certain Labor Matters

No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because the person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify at any proceeding relating to the labor standards applicable hereunder to that person's employer.

Section 2.407 Status as Independent Contractor

The Consultant, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

ARTICLE II, Part 5. Documents

Section 2.501 Patents and Copyrights

The Consultant agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection with the work required pursuant to this Agreement, the City shall own the copyright to any copyrightable material and may, in its discretion, grant a royalty-free, non-exclusive license to use, reproduce and distribute such copyrightable material. The Consultant further agrees that in the event it, or any of its employees, develops any process, machinery or product for which a patent would be obtainable, the Consultant shall provide the necessary information to the City, so that the City can apply for such patent at its own expense. Such patent shall become the property of the City; provided, however, that the City may, in its discretion, may grant to Consultant a royalty-free, non-exclusive license to produce or reproduce such patented product. The benefits

of either a patent or a copyright shall also inure to any public agency which finances, in whole or in part, this project and such agency shall receive a royalty-free, non-exclusive license to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

Section 2.502 Audit

The Consultant agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Consultant shall maintain all books, documents, papers and other evidence pertinent to the performance of work under this Agreement in accordance with generally acceptable accounting principles, and 40 CFR Part 30 in effect during the term of this Agreement. The Consultant agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the City and further agrees to provide necessary staff support to the performance of such audit. The Consultant agrees to maintain for a period of six (6) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond six years for any and all records and information pertaining to unresolved questions, which have been brought to the Consultant's attention by written notice by the City. The Consultant agrees to furnish to the City data to include but not be limited to, intake records, status change notices, termination notices, and follow-up records. Said reports will be submitted periodically as required by the City.

Section 2.503 Content of Sub-Agreements

The Consultant agrees that all sub-agreements authorized by this Agreement shall be in written form. The Consultant shall require all subcontractors to comply with any of the following sections which may be in this Agreement: "Equal Employment Opportunity; Affirmative Action and Employment of Local Labor; Compliance with Labor Laws; Certifications Regarding Conflicts of Interest; Anti-Kickback Rules; Interest of City and Contractor in Contract." It is the purpose of this section to insure that all Agreements obligate all parties performing work under this Agreement to comply with necessary governmental programs and policies. The City may require the Consultant to submit copies of such sub-agreements to the City. If such copies are not submitted upon request, the City may have the right to withhold any and all payments to the Consultant to those items of work which have not complied with this section.

ARTICLE II, Part 6. Termination

Section 2.601 Termination for Convenience of the City

A. This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Consultant. However, no such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.

B. If the Agreement is so terminated the City may take over the work and services and prosecute the same to completion by contract or otherwise. The Consultant, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.

C. After receipt of written notice of termination, the Consultant shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.

D. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Consultant the amount determined as the total of the following:

1. The cost of all work performed prior to the effective date of termination.

2. The cost of settling and paying claims arising out of and as a direct result of the termination;

3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if the Consultant would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

Section 2.602 Termination for Default

A. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever the Consultant shall default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by the Consultant to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.

B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.

C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.

D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.

E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Consultant was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."

F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE II, Part 7. General

Section 2.701 Prohibition Against Assignment

The Consultant agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute such contract to any other person or corporation without the previous consent in writing of the City.

Section 2.702 Compliance with All Laws

The Consultant agrees that during the performance of the work required pursuant to this Agreement, the Consultant, and all employees working under its direction, shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law, and contractual clause required by law to be inserted in this Agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

Section 2.703 Successors

The City and the Consultant each bind their successors, executors, administrators and assigns in respect of all covenants of this Agreement.

Section 2.704 Interest of City and Consultant in Contract

The City and the Consultant agree that no member, officer, or employee of the City or of the Consultant or assignees agents shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

Section 2.705 Permits, Laws and Taxes

A. In the event that services performed by the Consultant for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the Consultant shall receive from the City the material necessary to obtain a tax exempt certificate upon written request.

B. The Consultant shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided in subparagraph A. above.

Section 2.706 Obligations Limited to Funds Available

The parties specifically agree that the Consultant's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

Section 2.707 Extent of Agreement

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, Agreements, and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by its authorized agent.

Section 2.708 Law and Forum

This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

Section 2.709 No Waiver

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

Section 2.710 Severability

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

Attachment 3

City's Workforce Plan &

MWBE Utilization Plan

City of Rochester
Professional Consultant Services Workforce Staffing Plan

WORKFORCE STAFFING PLAN FOR PROFESSIONAL CONSULTANT SERVICES								
PROJECT NAME:			DATE:				MINORITY GOAL	FEMALE GOAL
CONSULTANT:			AGREEMENT NUMBER:				20.00%	6.90%
CLASSIFICATION	**NUMBER OF EMPLOYEES WORKING ON PROJECT**							
	TOTAL		**MINORITY**		**NON-MINORITY**		**MINORITY %**	**FEMALE %**
	M	F	M	F	M	F		
Officials, Administrators								
Professionals								
Technicians								
Sales Workers								
Office, Clerical								
Craft Workers								
Laborers								
Temporary, Apprentices								
Other (Specify)								
TOTAL WORKFORCE								

Prepared by (Signature):	**Title:**	**Phone:**
Printed Name:	**Date:**	**Email:**

Reviewed by MWBE Officer:	**Date:**

MWBE GOALS: MBE 15%, WBE 15%

CITY OF ROCHESTER
MWBE FORM A
MWBE UTILIZATION PLAN – PROFESSIONAL CONSULTANT SERVICES

Project Name_____ **Agreement #** _____

Consultant_____ **Total Contract Amount* $**_____**Original Plan** ☐ **Revised Plan** ☐

MWBE Business Name	MBE	WBE	Scope of Work to be Performed	Projected Start Date	Projected End Date	Total Amount of MWBE Subcontract	Percentage of Total Contract*
					TOTAL:		

*Total Contract equals contract award plus all change orders

Authorized Person _____**Title** _____**Phone** _____

Signature _____ **Date**_____ **Email**_____

Approved by MWBE Officer_____ **Date**_____