

### Administrative Conditions

The following administrative conditions have been revised or added:

#### 4. SUSPENSION AND DEBARMENT - ALL RECIPIENTS

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

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

#### 17. PAYMENT TO CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2010, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

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

#### 19. SINGLE AUDIT ACT

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. For fiscal periods 2002 to 2007 recipients are to submit hardcopy to the following address:

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

For fiscal periods 2008 and beyond the recipient MUST submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

### Programmatic Conditions

All Programmatic Conditions Remain the Same

### Administrative Conditions

The Following Terms and Conditions have been revised:

1. LOBBYING AND LITIGATION - ALL RECIPIENTS - SUPPLEMENTS TO THE LOBBYING CONDITION

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

3. RECYCLING TERM AND CONDITION FOR STATE AGENCIES AND POLITICAL SUBDIVISIONS

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

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

4. SUSPENSION AND DEBARMENT - ALL RECIPIENTS

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

Recipient may access the Excluded Parties List System at [www.epis.gov](http://www.epis.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

5. HOTEL-MOTEL FIRE SAFETY

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

The Following Terms and Conditions have been added:

9. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

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

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

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

**10. UNLIQUIDATED OBLIGATIONS TERM AND CONDITION: PART 31**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Financial Status Report – also called the SF269 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Completed SF269s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

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

**11. EPA PARTICIPATION**

This award and the resulting ratio of funding is based on estimated costs requested in the application. EPA participation in the final total allowable program/project costs (outlays) shall not exceed the statutory limitation 80% of total allowable program/project costs or the total funds awarded, whichever is lower.

**12. REIMBURSEMENT LIMITATION**

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

**13. TRAFFICKING VICTIMS PROTECTION ACT OF 2000**

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

**14. HISTORIC PROPERTIES**

The recipient agrees to consult with the appropriate State Office in the identification and evaluation of any pre-1946 structures which may be impacted by scheduled project activities, or properties located adjacent to the activities areas. The recipient agrees to comply with efforts to identify, evaluate and appropriately design project activities to avoid or minimize adverse project impacts to any historic properties listed, or which satisfy the criteria for eligibility for listing (36 CFR 60.4), in the National Register of Historic Places.

**15. NATIONAL HISTORIC PRESERVATION ACT**

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

**16. PROCUREMENT**

The cost of professional services contracts and/or small purchases procured in compliance with the minimum standards for procurement under grants (see 40 CFR 31.36) are allowable costs for reimbursement with grant funds. No grant

funds may be used to reimburse the federal share of any procurement action(s) found to be in noncompliance with the grant procurement regulations. (Note: all project expenditures are deemed to include both the federal and nonfederal shares).

The recipient agrees to conduct all procurement actions under this assistance agreement in compliance with 40 CFR 31.36(b)-(k). The recipient may follow their own procurement procedure which may reflect compliance with applicable State and Local laws, regulations, ordinances, etc., provided that all procurement actions comply with the minimum standards for procurement under assistance agreements per 40 CFR 31.36. The recipient agrees to submit to EPA for pre-award and/or post award review procurement documents including, but not limited to: selection procedures, invitations for bids, independent cost estimates, requests for qualifications and/or proposals, evaluation methodology and results, memorandum of review or negotiation, cost and/or price analysis, proposed contract documents (prior to execution), disadvantaged business enterprise documentation, etc.

#### **17. PAYMENT TO CONSULTANTS**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2008, the limit is \$571.12 per day and \$71.39 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

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

#### **18. SUBAWARDS**

a. The recipient agrees to:

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

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

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

**All Other Administrative Conditions Remain the Same.**

### **Programmatic Conditions**

**All Programmatic Conditions Remain the Same.**

## Administrative Conditions

### 1. LOBBYING AND LITIGATION - ALL RECIPIENTS

Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, *Lobbying and Litigation Certificate*, within 90 days after the end of project period. The form can be accessed at <http://www.epa.gov/ogd/forms/adobe/5700-53.pdf>.

Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

### 2. LOBBYING - ALL RECIPIENTS

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

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

### 3. RECYCLING TERM AND CONDITION

#### **ALL RECIPIENTS:**

In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

#### **STATE AGENCIES AND POLITICAL SUBDIVISIONS:**

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

#### **STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND NON-PROFIT ORGANIZATIONS:**

Pursuant to 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

### 4. SUSPENSION & DEBARMENT

Recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a

similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

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

5. **HOTEL/MOTEL CONDITION**

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

6. **INFORMATION COLLECTION REQUIREMENTS**

EPA and the recipient agree to comply with the requirements of the Paperwork Reduction Act in completing the project. Because the scope of work includes a survey, a questionnaire or similar information-gathering activity, the paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* ), requires EPA to obtain Office of Management and Budget (OMB) clearance prior to the recipient's collection of information by means of identical questions posed to 10 or more persons.

The recipient will provide to the EPA Project Officer the following information: (1) description of the information to be collected; (2) explanation of the need for the information; and (3) to whom the survey is being directed.

7. **MBE/WBE AND SMALL BUSINESS CONDITION for non-SRF Recipients**

**REQUIREMENTS:**

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

**FAIR SHARE GOALS:**

- (a) The recipient accepts the Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) "fair share" goals and objectives negotiated with EPA as follows:

**FLORIDA**

SRF Construction: 11% MBE and 3% WBE  
(both SRFs)  
A & E Services: 10% MBE and 15% WBE  
Commodities: 7% MBE and 17% WBE  
Contractual: 14% MBE and 36% WBE  
Construction: 10% MBE and 11% WBE  
(non SRF)

- (b) If the recipient does not want to rely on the applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in the relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted to the EPA Grants Management Office, 61 Forsyth Street, Atlanta, GA 30303 within 30 days of award and approved by EPA no later than 30 days thereafter.

**PURPOSE AND OBJECTIVE:**

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

**BID DOCUMENTS FOR PRIME AND SUBCONTRACTORS:**

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

**REQUIRED STEPS AND DOCUMENTATION:**

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

**REPORTING:**

The recipient agrees to submit an EPA form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to the Grants Management Office within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, the recipient agrees to submit an EPA form 5700-52A to the EPA Grants Management Office, 61 Forsyth Street, Atlanta, GA 30303 by October 30 each year.

**RACE AND GENDER NEUTRAL ACTION:**

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

**SMALL AND RURAL BUSINESSES:**

In accordance with Section 129 of Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988, the recipient agrees to utilize and to encourage any prime contractors under the assistance agreement to utilize small business located in rural areas to the maximum extent possible. The recipient agrees to follow the six affirmative steps stated in 40 CFR 30.44(b), 31.36 or 35.6580 as appropriate, in the award of any contracts under this assistance agreement. Compliance with this requirement will be monitored during management review conducted by EPA.

**8. PERFORMANCE POLICY**

This agreement is performance based and developed consistent with EPA's Policy on Performance Based Grants and Region 4's Policy for Management of Grants and Cooperative Agreements. The workplan constitutes the recipient's and EPA's commitment to accomplish the program goals and objectives. EPA's review and evaluation of performance under this agreement and EPA's response to the findings of oversight will be carried out in accordance with the stated policies.

**Programmatic Conditions**

See Brownfields Revolving Loan Fund program Terms and Conditions Attached.

1. The CAR shall not incur costs under this cooperative agreement for loans or subgrants until EPA approval of the **Final Cooperative Agreement Workplan**. This cooperative agreement is contingent on EPA approval of a Final Workplan.