U. S. ENVIRONMENTAL PROTECTION AGENCY
NOTICE OF AWARD

RECIPIENT NAME AND ADDRESS:

Honorable A.C. Wharton, Jr., Mayor
Shelby County Government
160 North Main Street, Suite 801
Memphis, Tennessee 38103

BF-95408108-0

[X] **Assistance Agreement**

[ ] **Assistance Amendment**

[ ] **Increase** [ ] **Decrease**

[ ] **Time Extension** [ ] **Administrative**

Enclosed are two copies of an Assistance Agreement from the U.S. Environmental Protection Agency.

To accept this Notice of Award, please carefully review any terms and conditions, sign[1], and return one original copy to the following address within 21 days[2] of the mailing date on the Assistance Agreement:

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 4
GRANTS MANAGEMENT OFFICE
61 FORSYTH STREET, SW
ATLANTA, GA 30303

ATTN: Keva Lloyd

The other original should be retained for your official records and copies distributed within your organization as needed. Please note, funds will not be available for draw until we receive your countersigned affirmation of the award.

To assist you with your post award management responsibilities, please see *"Reporting Forms and Guidance for Administration of Your Assistance Agreement[3]."* This document contains important post-award reporting requirements and instructions on how to receive payments. To view this and other EPA grant-related information, visit our Region 4 Grants Office website at: *www.epa.gov/region4/grants/*

Please reference the EPA Assistance Number on all future correspondence regarding this Assistance Agreement. If you have any questions, you may contact the Grants Specialist identified above at (404) 562-8420 Lloyd.Keva@epa.gov .

[1] Must be signed by authorized representative as shown on the Affirmation of Award signature block or formally authorized delegate.
[2] Failure to countersign and return within 21 days of the mailing date may result in withdrawal of this award.
[3] Please contact your Grant Specialist if you need a paper copy of this document.

SPECIAL NOTICE: On May 25, 2008, EPA's Disadvantaged Business Enterprise (DBE) Rule became effective. This new regulation contains DBE provisions affecting procurement actions under all EPA financial assistance agreements/grants awarded on or after May 27, 2008 (See Attached Special Notice). One of the key components of the new Rule is that Recipients must negotiate fair share objectives with EPA prior accessing funds for procurement. Recipients may adopt the fair share objective of another recipient (i.e. State Agency); however, recipients must affirm the acceptance of the other recipient's fair share objective. Please indicate below whether you chose to use the State negotiated rates as your fair share objective or to develop your own rates. Please return a copy of this notice indicating your decision with your signed agreement to the Grants Management Specialist noted above.

[ ] **The above named recipient chooses to use the State negotiated rates as indicated in the terms and conditions.**

[ ] **The above named recipient chooses to develop its own fair share objectives. In choosing this option, we agree to submit to EPA the proposed fair share objectives and supporting documentation within 120 days after accepting the assistance award. We also understand that we can not expend funds for procurement until negotiations are completed and rates are approved by EPA.**

[ ] **The above named recipient currently has approved negotiated rates with EPA.**

SPECIAL NOTICE
DISADVANTAGED BUSINESS ENTERPIRSE (DBE) RULE

On May 25, 2008, EPA's Disadvantaged Business Enterprise (DBE) Rule became effective. **This new regulation contains DBE provisions affecting procurement actions under all new EPA financial assistance agreements (grants/cooperative agreements) awarded on or after May 27, 2008.** EPA's grant recipients, sub-recipients, and loan recipients (and the prime contractors of these three entities) are all subject to EPA's DBE Rule and DBE Program requirements.

This DBE regulation also revises EPA's Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Program by renaming it the Disadvantaged Business Enterprise (DBE) Program and modifies the MBE/WBE Program in ways that better ensure recipients of EPA financial assistance and their prime contractors seek out, and wherever possible, utilize MBE, WBE, and other DBE firms when procuring services, equipment, supplies, and construction on EPA-funded projects.

The key functional components of the DBE Program are as follows:

- **Fair Share Objectives - Recipients must negotiate fair share objectives with the Agency within 120 days after the acceptance of the assistance award.** Recipients may adopt the fair share objectives of another recipient (State Agency). Please indicate your decision on the "Notice of Award" and return the signed copy to EPA. ***If you elect to negotiate fair share objectives, negotiations must be completed and rates approved prior to expending (drawing-down) funds for procurement*** (Exceptions to the fair share objective requirement can be found at www.epa.gov.osbp).

- **Six Good Faith Efforts and Contract Administration Requirements** – The "Six Good Faith Efforts" combine the Six Affirmative Steps" and the "Six Positive Efforts" and are still **required** by all grantees. **The substance of the efforts has not changed**. In addition, several mechanisms are now in place to protect DBE contractors.

- **MBE/WBE Reporting** – Recipients who reported quarterly under the old program, now report on a semi-annual basis.

- **MBE/WBE Certification** - In order to be counted towards a recipient's MBE/WBE accomplishments, MBEs and WBEs must be certified by EPA, SBA, DOT, or by state, local, Tribal, or private entities whose certification criteria matches EPA's.

An overview of the DBE Program, which includes a comparison chart showing the differences between the old MBE/WBE Program and the new DBE Program is available at www.epa.gov/osbp. The full text of the new rule can be accessed on the Federal Register website at www.gpoaccess.gov/fr.

The new DBE Rule will not retroactively affect financial assistance agreements entered into before the effective date of the rule. Financial assistance agreements entered into **before** the effective date of the new rule will continue to be subject to the MBE/WBE program terms and conditions in their financial assistance agreements (This includes reporting requirements).

To ensure that your organization/agency is complying with the appropriate MBE/WBE or DBE Program requirements when procuring Services, Supplies, Equipment, and Construction with EPA funds and any matching dollars, please note the **award date and the terms and conditions** of your organization/agency's financial assistance agreement/grant with EPA.

If you have questions about EPA's DBE Rule and program requirements, please contact:

Josephine V. Brown
Small and Disadvantaged Business Program Manager
EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960
Phone - 404-562-9634 or brown.Josephine@epa.gov

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

ASSISTANCE ID NO.			DATE OF AWARD
PRG	DOC ID	AMEND#	07/28/2008
BF -	95408108	- 0	
TYPE OF ACTION: New			MAILING DATE: 08/04/2008
PAYMENT METHOD: Advance			ACH#: pend

RECIPIENT TYPE:
County

Send Payment Request to:
Las Vegas Finance Center

RECIPIENT:
Shelby County Government
160 N. Main St., Suite 801
Memphis, TN 38103
EIN: 62-6000841

PAYEE:
160 N. Main St., Suite 801
Memphis, TN 38103

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Mr. Lee Hinson 160 N. Main St., Suite 801 Memphis, TN 38103 **E-Mail:** lee.hinson@shelbycountytn.gov **Phone:** 901.545.2745	Olice Carter 61 Forsyth Street Atlanta, GA 30303-8960 **E-Mail:** carter.olice@epa.gov **Phone:** 404-562-4300	Keva Lloyd Grants Management Office **E-Mail:** Lloyd.Keva@.epa.gov **Phone:** 404-562-8420

PROJECT TITLE AND DESCRIPTION
Brownfields Assessment and Cleanup Cooperative Agreements

This action approves an award in the amount of $347,080 to conduct inventory, characterize and assess brownfields sites along the CSX Railroad Corridor in Shelby County, Tennessee that may be contaminated with hazardous substances, and to carry out community involvement and other activities that encourage revitalization of Brownfields sites.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
07/01/2008 - 06/30/2011	07/01/2008 - 06/30/2011	$347,080.00	$347,080.00

NOTICE OF AWARD

Based on your application dated 05/30/2008, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $347,080. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $347,080. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
61 Forsyth Street Atlanta, GA 30303-8960	U.S. EPA, Region 4 Resource Conservation and Recovery Act Division 61 Forsyth Street Atlanta, GA 30303-8960

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

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
Digital signature applied by EPA Award Official	J. I. Palmer, Jr., Regional Administrator	07/28/2008

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Mayor A. C. Wharton, Jr., Mayor, Shelby County, Tennessee	

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 347,080	$ 347,080
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$	$ 0
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 347,080	$ 347,080

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	0804VT8033	08	E4	04V0AG7	402D79E	4114	G400NY00	-	347,080
									347,080

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$0
2. Fringe Benefits	$0
3. Travel	$2,400
4. Equipment	$0
5. Supplies	$0
6. Contractual	$344,680
7. Construction	$0
8. Other	$0
9. Total Direct Charges	$347,080
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	$347,080
12. Total Approved Assistance Amount	$347,080
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$347,080
15. Total EPA Amount Awarded To Date	$347,080

Administrative Conditions

1. **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.

2. **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.

3. **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.

4. **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.

5. **MANAGEMENT FEES AND SIMILAR CHARGES**

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

6. **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.

7. **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 100% of total allowable program/project costs or the total funds awarded, whichever is lower.

8. **PRE-AWARD COSTS APPROVED**

Costs incurred prior to the date of award as specified in the approved application and workplan are hereby authorized. The pre-award costs included in the application and workplan are necessary to complete the project and would otherwise have been authorized.

9. **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.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. **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.

11. **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.

12. **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 polices 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.

13. 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.

14. 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.

15. 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 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.

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

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

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D
A recipient must negotiate with the appropriate EPA award official, or his/her designee, air share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient
The dollar amount of this assistance agreement is $250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **STATE OF TENNESSEE** as follows:

MBE: CONSTRUCTION 2.6%; SUPPLIES 5.2%; SERVICES 5.2%; EQUIPMENT 5.2%
WBE: CONSTRUCTION 2.6%; SUPPLIES 5.2%; SERVICES 5.2%; EQUIPMENT 5.2%

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

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404
The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

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

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503
The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to:

MS. JOSEPHINE V. BROWN
SMALL and DISADVANTAGED BUSINESS PROGRAM MANAGER
EPA, REGION 4
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-8960
Phone: 404.562.9634 or brown.Josephine@epa.gov

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

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

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

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

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).

Programmatic Conditions

Please see attached FY 2008 Brownfields Assessment Grant Terms and Conditions.

REGION 4
FY 2008 Brownfields Assessment Grant Terms and Conditions

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 brownfields sites as described in the EPA approved work plan.*

A. Federal Policy and Guidance

a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall insure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.

b. CERCLA 104(g) requires that recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. If the CAR uses funds awarded under this agreement to contract for construction, repair or alteration work, it must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.

c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

d. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section

504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfields site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.

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

2 a. For any petroleum contaminated brownfields site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):

   (1) that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
   (2) that the State determines there is "no viable responsible party" for the site;
   (3) that the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
   (4) that the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

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

   b. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact,

and a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is a person who 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 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfields sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. This cooperative agreement is contingent on EPA approval of a Final Work plan. Unless EPA has notified Recipient that the cooperative agreement work plan has been approved prior to award, a **Final Work Plan** must be approved by EPA within 60 calendar days following the date of award. Any expenditure incurred by the recipient prior to EPA approval of the Work Plan must be consistent with the approved Work plan in order to be reimbursed by EPA.

2. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.

3. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the Agency may terminate this agreement.

4. Assessment funding for any eligible brownfields site may not exceed $200,000 unless a waiver has been granted by EPA and then funding is not to exceed $350,000 at the site subject to the waiver.

B. Substantial Involvement

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

a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.

b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a sub-grant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfields site and determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the sub-grantee from using EPA funds to assess a site for which the sub-grantee is potentially liable under §107 of CERCLA.

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

d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

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

b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.

c. The CAR and its sub-grantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

3. The CAR will provide project updates to the State Brownfields or Voluntary Cleanup Program (VCP) contact on a regular basis.

a. The CAR will make the State aware of all site-specific Phase II assessment activities to be initiated.

b. The CAR will provide the State an opportunity to review and comment on all technical reports, including QAPPs, sampling plans, ABCAs, cleanup plans, and other technical reports.

c. States should also be involved in any site eligibility determinations.

C. Cooperative Agreement Recipient Roles and Responsibilities

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

2. The CAR is responsible for ensuring that contractors and sub-grant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and sub-grant recipients and contractors are consistent with the terms and conditions of this agreement.

3. Sub-grants are defined at 40 CFR 31.3. The CAR may not sub-grant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding sub-grants competitively and the CAR must consider awarding sub-grants through competition.

4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the $200,000 assessment grant funding limitation for an individual brownfields site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding $200,000. In no case may EPA funding exceed $350,000 on a site receiving a waiver.

   (***Note: Cooperative Agreement Recipients expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.***)

D. Quarterly Progress Reports

1. The CAR must submit progress reports on a quarterly basis 30 days after the end of each Federal fiscal quarter (i.e., reports due January 30, April 30, July 30, and October 30, respectively). The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:

   a. Documentation of progress at meeting performance outcomes/outputs, project narrative, project time line and an explanation for any slippage in meeting established output/outcomes.

   b. An update on project milestones.

   c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.

d. If applicable, quarterly reports must provide separate accounting of costs incurred at hazardous substances brownfields sites and petroleum-only brownfields sites.

e. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where assessment activities were completed. *To the extent consistent with the EPA approved work plan for this agreement*, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:

1. Acres per property
2. Assessments started/completed
3. No cleanup required
4. Types of contaminants found
5. Acres of greenspace created
6. Engineering/institutional controls required, what type and whether they are in place
7. Cleanup plans
8. Redevelopment underway
9. Funds leveraged
10. Jobs leveraged
11. Health monitoring studies, insurance, institutional controls funded

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific sites under this grant.

3. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA approved work plan.

4. The CAR must submit property information via the on-line Assessment, Cleanup and Redevelopment Exchange System (ACRES) at the:

a. Commencement of a Phase I assessment, and/or
b. Expenditure of $1,000 or more of grant funds at a property, and
c. Completion of a Phase I environmental site assessment, and
d. Completion of a Phase II environmental site assessment.

The CAR must submit the updated property specific information within 30 days after the end of the Federal fiscal quarter in which the event occurred.

The EPA Project Officer will provide the CAR with access to the ACRES on-line reporting system to perform the reporting requirements.

The CAR must obtain approval from the EPA Project Officer before expending cooperative agreement funds to purchase adequate computer supplies to complete on-line

reporting activities.

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

   In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

6. A copy of the quarterly report should be submitted to the following individuals:

   EPA Designated Project Officer
   U.S. Environmental Protection Agency
   RCRA Division
   Brownfields Section
   61 Forsyth Street, S.W.
   Atlanta, GA 30303-8960

   Brownfields Data Manager
   U.S. Environmental Protection Agency
   Office of Brownfields Cleanup and redevelopment
   1301 Constitutional Avenue, N.W.
   Room 2402
   Washington, DC 20460

III. FINANCIAL ADMINISTRATION REQUIREMENTS

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

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:

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

   b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);

c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section B.

d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing sub-grants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. **Local Governments Only:** If the EPA-approved scope of work includes funding for brownfields program development and implementation (including monitoring of health and institutional controls), the CAR must ensure that no more than 10% of the funds awarded by this agreement are used (by the CAR) for this purpose. The CAR must maintain records on funds that will be used to carry out these activities and must provide separate accounting of costs incurred.

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

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

a. Cleanup activities;

b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);

c. Job training unrelated to performing a specific assessment at a site covered by the grant;

d. To pay for a penalty or fine;

e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;

f. To pay for a response cost at a brownfields site for which the recipient of the grant or sub-grant is potentially liable under CERCLA §107;

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

h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include <u>all indirect costs</u> under applicable

OMB Circulars.

a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.

b. Ineligible grant administration costs include direct costs for:

(1) Preparation of applications for Brownfields grants;

(2) Record retention required under 40 CFR 31.42;

(3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;

(4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;

(5) Maintaining and operating financial management systems required under 40 CFR 31;

(6) Preparing payment requests and handling payments under 40 CFR 31.21;

(7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and

(8) Close out under 40 CFR 31.50.

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

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

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

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

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

C. Interest-Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment 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, clean up planning or other activities when the costs for the activity is charged to this agreement.

2. The CAR must deposit advances of grant funds and program income (e.g., fees) in an interest bearing account.

   a. Interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.

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

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

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

B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

2. **QAPP:** The CAR, or its service agent/contractor(s), must have an **EPA approved Quality Assurance Project Plan (QAPP)** in place before beginning **each** property specific field activity, funded wholly or in part by this agreement, that includes sampling and analysis of environmental media. The CAR should allow EPA adequate time (generally 45 days) for review and approval. The QAPP should be consistent with the EPA Region 4 "*Quality Assurance Project Plan Guidance Document for Brownfields Site Assessments and/or Cleanups,*" March 2005 and "*EPA Requirements for QA Project Plans,*" QA/R-5, March 2001, and later revisions.

C. Completion of Assessment Activities

The CAR shall properly document the completion of all activities described in the EPA approved work plan. 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 are complete.

D. All Appropriate Inquiry

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 standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule. This does not preclude the use of 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.

V. Conflict of Interest: Appearance of Lack of Impartiality

A. Conflict of Interest

The CAR shall establish and enforce conflict of interest provisions that prevent the award of sub-grants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or sub-grant to a sub-grant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

(i) The affected party,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the sub-grant recipient.

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

affected parties.

VI. PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply:

Payment is the U.S. EPA's transfer of funds to the CAR;

Closeout refers to the process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

A. Payment Schedule

The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

B. Schedule for Closeout

1. The CAR should supply to the EPA Designated Project Officer one copy of all tangible final products that were created for the purposes of the funded project, ***funded wholly or partly with EPA funds.***

2. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA approved work plan.