



## CITY OF DOUGLAS REQUEST FOR PROPOSAL

### ENVIRONMENTAL PROTECTION AGENCY BROWNFIELD CLEANUP GRANT PROGRAM PROFESSIONAL SERVICES

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#### Key Dates:

Invitation to Bid:	April 27, 2023
RFP Advertised:	May 4, 2023
Last Date for Questions:	May 26, 2023 @ 12:00 PM
Submit questions to:	<a href="mailto:douglas@douglasmi.gov">douglas@douglasmi.gov</a>
Proposals must be received by:	June 7, 2023 @ 2:00 PM
Proposals Opened Publicly:	June 7, 2023 @ 2:00 PM
Notification of Selection:	June 14, 2023
City Council Tentative Award:	June 19, 2023 @ 7:00 PM



## SECTION 1 INTRODUCTION

### **Introduction:**

The City of the Village of Douglas (City) is home to approximately 1,400 residents. The City is located in West Michigan on the eastern shore of Lake Michigan and is bordered on the north by Kalamazoo Lake and the City of Saugatuck, and Saugatuck Township to the south and east. The City covers approximately 2.0± square miles and is located in western Allegan County.

Douglas is situated on Michigan's "Art Coast" and is home to a quaint downtown with a variety of retail shops, art galleries, and fine dining restaurants that attract visitors from major metropolitan areas. Being located less than three hours from Detroit and Chicago, Douglas' summer population more than doubles as seasonal residents and visitors come to enjoy mild summers on the lake and an abundance of outdoor recreation activities such as swimming, boating, and hiking in nearby forested trails and sand dunes.

The City was once home to a manufacturing facility that hosted various industrial / manufacturing processes through the years which has resulted in sources of contamination. Known locally as 200 Blue Star Highway, the former factory occupies a 7.18 acres site conveniently located on one of the main thoroughfares in Douglas and is a potential location for a future mixed-use development. The City received a United States Environmental Protection Agency (EPA) cleanup grant to remediate hazardous substance contamination in preparation for redevelopment of the property. Polychlorinated biphenyl (PCB), a Toxic Substance Control Act (TSCA) substance, has been characterized on the north side of the property in soil and concrete samples.

The site consists of a single parcel that was developed in the 1940s into an industrial building. Activities at the site included plating, buffing, zinc die casting, metal forming, stamping, phosphatizing, and painting metal parts. By 1976, the property was owned and occupied by a furniture manufacturer. The building was vacated in 2014. The City purchased the property in 2019. The City demolished the building in 2022 to prepare for PCB cleanup activities. The concrete floor, foundations, and bituminous paved areas were left in place to cap the site contamination.

The City, through this Request For Proposal (RFP), is seeking a qualified environmental consulting firm to provide professional services to implement a brownfield clean up grant work plan to satisfy the terms of an EPA Brownfield Cleanup Grant awarded to the City in October 2022. Following the execution of the cooperative agreement with the EPA, the City is issuing this RFP to identify and procure the services of a qualified environmental consultant. The successful consulting firm will provide environmental expertise, experience, comprehensive technical skills, a collaborative style, and insight to the City.

The \$500,000 grant award will be dedicated to removing hazardous substance contamination from the site. The City will provide a 21.63 percent grant match in the amount of \$138,000 for a total project cap of \$638,000.

Phase I and II Environmental Site Assessments indicate contaminants such as PCBs and volatile organic compounds such as Trichloroethene (TCE) in excess of Michigan's Residential and Nonresidential Drinking Water, Groundwater Surface Water Interface, and Groundwater Volatilization to Indoor Air cleanup criteria. (See Appendix A – Brownfield Cleanup Grant Program Work Plan). PCB material is present in concrete and soils on the north end of the site. PCB depths range from 1 foot to 15.5 feet below ground surface.

In October 2022, the City received a report from Tetra Tech, Inc. following an EPA Targeted Brownfield Assessment funded investigation. The report summarized the Phase II environmental site assessment of the property and provided a conceptual remediation action plan (See Appendix B – EPA Targeted Brownfield Assessment Investigation).

The following tasks comprise the City's Cleanup Grant project:

1. Community Involvement and Outreach
2. Cleanup Planning
3. Cleanup Activities
4. Grant Management

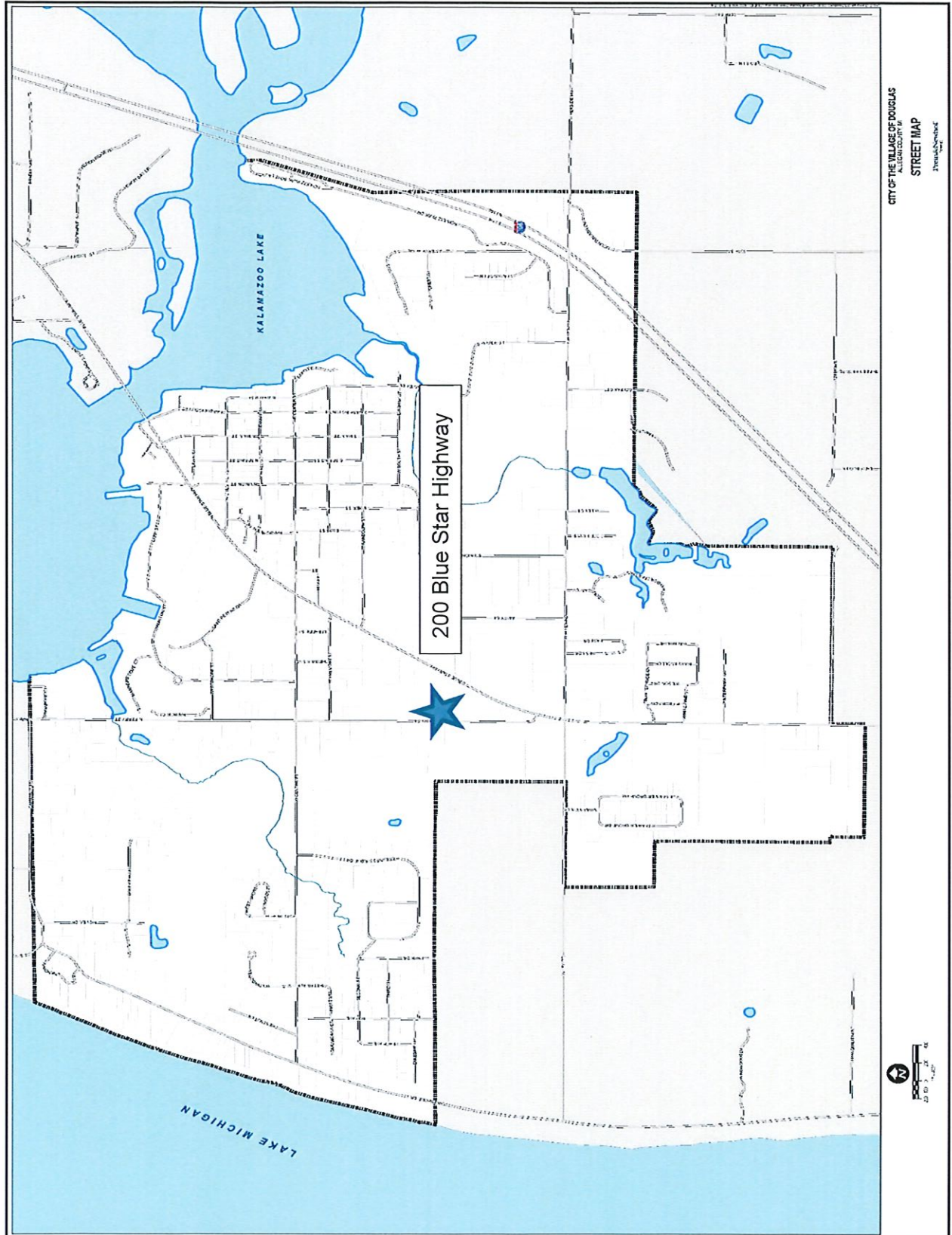
The potential outcome of the cleanup and redevelopment of this property is high occupancy mixed uses of commercial, retail and live-work space, following a risk-based cleanup approach using the TSCA Subpart D Cleanup Standards. Prior to the commencement of cleanup activities, a risk-based TSCA PCB Cleanup work plan will be prepared by the consultant for EPA review and approval. Cleanup activities are expected to include the disposal of approximately 1,670 tons of contaminated soil, approximately 460 tons of contaminated concrete, the import and placement of approximately 1,000 cubic yards of clean fill material, and the installation and maintenance of an appropriate surface cover consisting of 10 inches of compacted clay cap over an estimated 8,275 square foot area.

Conceptually, the City foresees incorporating placemaking features into the redeveloped property that may include bike lanes, sidewalks, and a relocated Ferry Street.



**Location Map:**

The City of Douglas location map included in this RFP outlines the boundaries of the City and indicates the location of 200 Blue Star Highway.







## SECTION 2 ADVERTISEMENT AND DISTRIBUTION

The following Request for Proposal is to be published in the City's local newspaper, the Commercial Record, and on the City's website under "Notices" at [www.douglasmi.gov](http://www.douglasmi.gov).

### **REQUEST FOR PROPOSAL ENVIRONMENTAL PROTECTION AGENCY BROWNFIELD CLEANUP GRANT PROGRAM PROFESSIONAL SERVICES**

The City of Douglas is issuing this Request for Proposal (RFP) to retain professional services of a qualified environmental consulting firm to provide a wide range of environmental services to the City of the Village of Douglas to implement a brownfield cleanup work plan according to the terms of a United States Environmental Protection Agency (EPA) Brownfield Cleanup Grant awarded to the City in October 2022. The grant award will be used to conduct remediation activities associated with a 7.18 acres site located at 200 Blue Star Highway. The grant award will be dedicated to removing hazardous substance contamination from the site. The successful consulting firm will provide expertise, experience, comprehensive technical skills, a collaborative style, and professional insight to the City. The estimated total cost of the project is \$638,000.

A complete copy of the RFP can be obtained from: City of the Village of Douglas City Hall, 86 W. Center Street, Douglas, Michigan 49406. Phone 269-857-1438.  
Email: [douglas@douglasmi.gov](mailto:douglas@douglasmi.gov)

Proposals will be accepted until 2:00 p.m., June 7, 2023. Disadvantaged Business Enterprises are encouraged to submit responses to the RFP. Sealed proposals can be delivered or mailed to:

Request for Proposals – Brownfield Cleanup Grant  
City of the Village of Douglas  
86 W. Center Street  
Douglas, Michigan 49406

#### **DISADVANTAGED BUSINESS ENTERPRISES:**

This RFP is open to consultants and firms eligible and qualified to provide Environmental Services. Disadvantaged Business Enterprises (DBE) are encouraged to apply, and DBE participation is a priority under the project's grant funding. For more information about DBE resources and training, contact EPA's Office of Small and Disadvantaged Business Utilization at: <https://www.epa.gov/resources-small-businesses>



## SECTION 3 TECHNICAL SPECIFICATIONS

### **Activities Required under this RFP:**

The City of Douglas is issuing this RFP to retain the professional services of a qualified environmental consulting firm to provide a wide range of environmental services to the City to assist with implementing the requirements of the Brownfield Cleanup grant. The successful consultant will provide experience, comprehensive technical skills, a collaborative style, and experience with work plan development and cleanup processes. The City's intention and requirement of this RFP is to comply with the City of the Village of Douglas' and US EPA federal qualifications-based procurement requirements as updated for 2022. The consultant will collaborate with the City, EPA, and to some extent, the State of Michigan.

The selected consultant will provide EPA Brownfield Cleanup grant assistance, environmental expertise, community involvement, grant implementation, cleanup oversight, and reporting. The consultant will assist the City with TSCA requirements, selection of a qualified contractor, and oversight of clean-up activities. The overall objectives are:

- Successfully engage the community to determine the end use of the site
- Prepare a risk-based clean-up plan
- Work with a qualified Consultant to prepare the site for redevelopment
- Remediate the brownfield site in accordance with the EPA Brownfield Cleanup grant requirements
- Bring economic vitality to the site.

The City intends to award a contract to one full-service consulting firm to achieve the goals outlined in the EPA Cooperative Agreement (CA) and Work Plan. The contract period will begin after contract approval by the Douglas City Council and continue through the closeout procedure of the Brownfield Cleanup grant. The contract period may be extended at the option of the City. The requested services under this RFP will be funded through the EPA grant funds and the City of Douglas. The contract maximum will be established from the scope of work based primarily on the work plan and budget of \$638,000. The contract maximum is the cap for contractual services including both professional fees and expenses.

### **Work To Be Performed:**

#### **Task 1 – Community Involvement and Outreach:**

Implementation activities include the development of a Community Involvement Plan which outlines community participation activities, resident notification of cleanup schedules and progress (i.e. mailings, public notices, email notifications, email progress updates, etc.), and a minimum of three public meetings (pre, interim, and post) to solicit input, educate, and update the community of cleanup progress. This task also includes the attendance of one



City staff member at the next EPA National Brownfield Conference 2023 in Detroit, Michigan.

Deliverables: Community Involvement Plan, meeting minutes documenting each community outreach / involvement / meetings, copies of handout materials, or other materials developed for public notices and information.

### **Task 2 – Cleanup Planning:**

Implementation activities include the finalization of the Analysis of Brownfield Cleanup Alternatives (ABCA), development and approval of a risk-based TSCA PCB Cleanup Work plan / model, preparation of bids and specifications, and solicitation of competitive pricing.

The TSCA PCB Cleanup Work plan / model will include updated cleanup volume calculations that incorporate the additional site assessment data from the EPA Targeted Brownfield Assessment investigation that was completed in the fall of 2022 (See Appendix B – EPA Targeted Brownfield Assessment Investigation). Cleanup work plan activities will take approximately one year and require the submittal of several drafts and ongoing correspondence with EPA TSCA staff before final approval is issued. The attendance of a pre-bid meeting and site walkover will be mandatory for qualified Consultants to submit competitive pricing. The retaining of a qualified Consultant will abide by EPA Guidelines and the City's established procurement process (see Douglas City Ordinances, Chapter 37 – Finance, Procedures for Purchases, Contracts and Bidding available on the City's website at [www.douglasmi.gov](http://www.douglasmi.gov)).

Deliverables: Final ABCA, Risk-based TSCA PCB Cleanup Work Plan, Bid Package / Solicitation, Pre-bid meeting / site walkover attendance list, and bid tabulation, recommendation to award, and written communication for City Council.

### **Task 3 – Cleanup Activities:**

Activities include the implementation of the risk-based TSCA PCB Cleanup Work Plan that involves the removal and disposal of contaminated soil and concrete surface material at an approved disposal facility, the import and placement of clean fill material, environmental sampling and oversight, and the installation and maintenance of appropriate surface cover. Cleanup of the PCB contaminated areas will be compliant with the cleanup standards outlines in TSCA Subpart D. Environmental sampling will be conducted by the consultant under an approved Quality Assurance Project Plan (QAPP).

Deliverables: QAPP, daily observation reports, project photos, and volume of contaminated materials removed. A summary of cleanup activities will also be provided in the quarterly progress reports.

### **Task 4 – Grant Management:**

Activities include the preparation and submittal of required progress reports, input of project data into ACRES, preparation and submittal of a final project report, and ongoing



correspondence with EPA and EGLE as appropriate. The quarterly reports will describe progress on each defined task in this Work Plan. The Annual Financial Report and the Annual Disadvantaged Business Enterprise (DBE) Report will be prepared in October of each year.

Deliverables: Quarterly progress reports, ACRES entries, and final project report.

**Remediation Goals for the Project:**

Cleanup of PCB contamination to the risk-based high-occupancy TSCA standard will eliminate a significant cleanup cost, which would enable state brownfield tax increment financing feasible to implement the necessary due care response activities available for redeveloping the property. Neither program would provide enough funding to fully address the cleanup of the PCB contamination and address due care response activities on their own. Surface barriers, vapor intrusion controls, or institutional controls are anticipated to address non-PCB related contamination which can be funded using state brownfield tax increment financing or state brownfield grants and loans.

Preliminary estimates include the removal and disposal of approximately 1,670 tons of contaminated soil, 460 tons of contaminated concrete, the import and placement of approximately 1,000 cubic yards of clean fill material, and the installation and maintenance of an appropriate surface cover consisting of a 10-inch compacted clay cap over an estimated 8,275 square foot area. Contaminated materials will be transported to a licensed facility capable of meeting applicable disposal requirements.

**Proposed Project Budget:**

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	\$4,000
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$634,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$638,000
10. Indirect Costs: 0.00 % Base Not Applicable	\$0
11. Total (Share: Recipient <u>21.63</u> % Federal <u>78.37</u> %)	\$638,000
12. Total Approved Assistance Amount	\$500,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$500,000
15. Total EPA Amount Awarded To Date	\$500,000

Task 1 Proposed Budget – Community Involvement and Outreach:

Contractual costs: The cost of preparing presentations for three meetings, which includes the preparation of handout materials and flyers and consultant time to assist the community outreach, and travel to the 2023 EPA Brownfield Conference. The cost of this task is estimated to be \$11,500 which will be paid for with a combination of grant funds and the City's match.

Task 2 Proposed Budget – Cleanup Planning:

Contractual costs: The total estimated cost to complete cleanup planning activities, which includes finalizing the ABCA, preparing risk-based TSCA PCB Cleanup Work Plan, and scoping and bidding the project is \$25,000

Task 3 Proposed Budget – Cleanup Activities:

Contractual costs: The total estimated cost of cleanup activities (to be overseen by the environmental consultant) is \$591,500, which will be paid for with a combination of grant funds and the City's match.

Task 4 Proposed Budget – Grant Management:

This task will be paid as part of the City's match and is estimated to be \$10,000.

**Project Timeline:**

See Appendix C – Proposed Project Timeline



## SECTION 4 PROPOSAL

The process of selecting organizations to provide consultation services for the City's benefit requires the accumulation of comprehensive and accurate information to ensure that a knowledgeable, objective decision can be made as well as compliance with Federal procurement standards outlined in 2 CFR 200.317 – 2 CFR 200.327 as well as 2 CFR 1500 for the implementation portion of this proposal and subsequent grant applications.

Consultants are asked to submit concise proposals describing their experience with the EPA Brownfield Cleanup program and TASCAs experience as well as their ability to manage and implement these types of grant funded projects. The response should include a clear outline of how the consultant would help the City to implement its Brownfield project and highlight their experiences and successes managing EPA Brownfield grants.

Consultants are required to submit written proposals that represent completion of the technical specifications listed in Section 3. The response to the proposal should be prepared simply and economically and should provide all the information it considers pertinent to communicate the Consultants' qualifications for the requirements listed herein. Emphasis should be placed on completeness and clarity of content.

### **Submission:**

For efficiency of review, written proposals should be prepared on standard paper and limited to ten (10) pages, exclusive of a maximum of five (5) resumes limited to two (2) pages each, and three (3) references limited to two (2) pages each—one of the three references from a public entity. In addition, include from this proposal an executed "Proposal Form". List any exceptions and deviations on a separate page.

Index and sequentially number all pages throughout or by section. The type and necessity of binding and covers will be at the consultant's discretion. The submittal should be clear and understandable when reproduced in black and white. Standard advertising brochures should not be included in the proposal.

All sealed proposals received by the City will be date and time stamped upon receipt. Sealed proposals will be opened according to the key dates listed on the cover page of this RFP. Proposal documents received after submission dates and time will not be accepted. Incomplete proposals will not be accepted. The City in its sole discretion will determine if a proposal is complete. Sealed proposals will be opened publicly per the date and time listed and read aloud at Douglas City Hall.

No emailed proposals will be accepted.



Please provide one (1) original and four (4) copies of the proposal submission. Consultants may either hand deliver sealed proposal or mail it to:

Request for Proposal – Brownfield Cleanup Grant  
City of Douglas  
86 W. Center St., PO Box 757  
Douglas, MI 49406

**Investigation by Consultant:**

The information presented in this RFP is for informational purposes only. It shall be the responsibility of the Consultant to thoroughly read and understand the information, instructions, and specifications herein. Consultants are expected to fully inform themselves as to the conditions and requirements of the services they are proposing to provide, this includes an examination of grant requirements, review of EPA grant award (See Appendix D) and review of EPA Cooperative Agreement (See Appendix E), and review of the site conditions. Failure to do so is at the Consultant's own risk.

No plea of error or plea of ignorance by the Consultant of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Consultant to make the necessary examinations and investigations will be accepted as a basis for varying from the requirements of the City. The City will assume that submission of a proposal means that the Consultant has familiarized itself with the grant, conditions, and requirements and intends to comply with them unless specifically noted otherwise. Furthermore, the City will assume that the consultant represents that they have thoroughly examined and become familiar with the work required under this RFP and that they are capable of performing quality work to achieve the objectives of the City.

**Clarification of Proposals:**

Any request for clarification or other correspondence related to this RFP shall be emailed to [douglas@douglasmi.gov](mailto:douglas@douglasmi.gov). The City shall make every attempt to respond within two business days to all known RFP holders on record at the time of the response by blind copy. The last date for questions is listed in the key dates on the cover page.

**Exceptions and Deviations:**

Any exceptions to the requirements of this RFP must be included in the proposal submitted by the consultant. Segregate such exceptions as a separate element of the proposal under the heading "Exceptions and Deviations".

**Review and Evaluation Process:**

The City will review and evaluate proposals with the following criteria in mind:

- Business organization to include the firm's name, areas of expertise, a brief history of the firm, size, office locations, business addresses, and website address. The name,

address, telephone number, and email address of a contact person and/or prospective project manager for the proposal shall be included.

- Qualifications and expertise related to relevant project components:
  - General description of firm's history providing EPA brownfield services
  - General description of the firm's services including experience for this contract in providing work plan development, experience with TASCAs projects, development of brownfield cleanup proposals, and selection of Consultants
- Consultant and staff experience related to brownfield projects (work plans, clean up, redevelopment planning)
  - Project experience in implementing the requirements of EPA grant funded projects
  - Experience of the firm in completing ABCAs
  - Knowledge and experience pertaining to EPA and state regulations shall be demonstrated
  - Brief biographical summaries of related experience for staff members working on the project
  - Organizational chart
  - Resumes for key project personnel assigned to this project. Indicate the project manager who will be responsible for ensuring project success.
  - Summary of professional licensures for proposed staff members
- Project approach
  - Description of the firm's technical approach to complete the tasks required of EPA brownfield grant funded projects
- Ability to facilitate public outreach activities
  - Summary of experience conducting community involvement and engagement activities related to brownfield programs
- Demonstrated ability to provide comprehensive and innovative environmental services
- Project understanding
- References
  - Include three (3) references for which the firm is currently providing or has completed brownfield consulting services in the past ten years of similar size and scope of the proposed project. References should include at least one (1) public entity (municipality, county, township, etc). Include description and dates of services provided, project location, reference name, telephone number, and email address.
- Cost
  - A stated cost for services, and other costs associated with the work to be performed in accordance with this RFP.

Personal interviews may be required to assist in evaluating each consultant's proposal and qualifications. If such interviews are required, consultant will be contacted to make arrangements.

**Proposal Costs:**

The City shall not be liable for any pre-contractual expenses incurred by any proposers to this RFP in preparation of their proposal submittals. Proposers shall not include any such expenses as part of their proposal. Pre-contractual expenses are defined as all expenses incurred by the Proposer in:

1. Preparing its proposal in response to this RFP
2. Submitting that proposal to the City
3. Negotiating with the City on any matter related to this RFP
4. Any other expenses incurred by the Proposer prior to the date of execution of the proposed agreement

**Proposal Selection & Award Process:**

It is the intent of the City of Douglas to enter into one contract with a full-service consulting firm whose proposal is the most conforming of this solicitation and will be most advantageous to the City of Douglas, provided it has been submitted in completion and accordance with the proposal requirements. If a proposal is selected, it will be the most advantageous regarding expertise, experience, comprehensive technical skills, collaboration, and experience in work plan development and cleanup process. The City expressly reserves the right to accept an offer other than the lowest responsive cost to the City and reserves the right to negotiate any terms prior to award. If acceptable terms cannot be negotiated, the City will abandon the negotiations and begin negotiations with the next ranked proposal until agreeable terms are concluded. City Council has the authority to award contracts at their sole discretion.

The City reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory, or inappropriate. The City reserves the right to reject any or all proposals, to award separate sections, to waive formalities or technicalities, and to reject non-conforming, non-responsive, or conditional proposals.

The City reserves the right to cancel this request or resulting contractual agreement for failure of the selected consulting firm to comply with the terms, conditions, and specifications of the RFP and/or contractual agreement.

The City reserves the right to obtain clarification of any point in a consultant's proposal or to obtain additional information.

All qualified proposals that are determined to be in the public interest for uses in accordance with the Brownfield Cleanup Grant RFP will be presented to the Evaluation Team for consideration and for recommendation to the City Council for award in accordance with key dates outlined in this RFP. Evaluators will use the Evaluation Form in Section 8.



**Notification of Selection:**

The City anticipates the selection of a consultant according to the key dates listed on the cover page. Should either party fail to execute a contract within sixty (60) days of notification of selection, the City reserves the right to rescind the selection and select another qualified RFP respondent.

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## PROPOSAL

### TO BE COMPLETED AND SUBMITTED

This RFP is to solicit proposals from qualified environmental consulting firm to compete for the awarding of a contract with the City of Douglas to provide a wide range of environmental services to the City of the Village of Douglas to implement a brownfield cleanup work plan according to the terms of a EPA Brownfield Cleanup Grant awarded to the City in October 2022.

Consultants are required to submit written proposals that present the requirements listed herein. The response to the proposal should be prepared simply and economically and should provide all the information it considers pertinent to its qualifications for the requirements listed herein. Emphasis should be placed on completeness and clarity of content.

#### Proposal Requirements:

The proposal should include the following to coincide with this RFP:

1. Explanation of how the Consultant would fulfill the requirements of the technical specifications, to include:
  - a. Narrative (limit to ten pages):
    - i. Consultant's qualifications and experience
    - ii. Statement of project understanding
    - iii. Statement of project approach to meet the technical specifications
    - iv. Ability to facilitate public outreach
    - v. Ability to provide comprehensive and innovative environmental service
  - b. Staff experience (limit to five resumes – two pages each)
  - c. References – describe work provided, date of work, length of contract and contact information (limit to three references – two pages each)
  - d. Cost proposal – inclusive of all fees and charges
  - e. Proposal form – Section 6
2. Identification of the person responsible for drafting the proposal and a contact person to whom inquiries should be directed, with an address, telephone number, and email.
3. Specify on a separate sheet of paper any exceptions or deviations of terms, conditions, or specifications that the Consultant is unwilling or unable to meet. Attach as "Exceptions and Deviations".
4. Statement that there is or is not pending litigation against the Proposing entity or its officers, principal members, shareholders, or investors, or any parent, subsidiary or affiliated entities or other interested parties other than minor personal injury suits involving claims under \$250,000. If so, explain.
5. If there are potential conflicts of interest, such as a relationship with a City of Douglas official or employee, or an immediate family member with the City of Douglas, the Consultant must identify and declare clearly to avoid any future conflicts with the City.

6. If awarded, how long will it take to initiate the project?
7. Any other pertinent information necessary to evaluate the proposal.

**THIS SECTION MUST BE SUBMITTED ALONG WITH RESPONSE IN ORDER FOR PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE.**





## SECTION 5 TERMS AND CONDITIONS

### **Notice to Consultants:**

The City officially distributes RFP documents through the City of the Village of Douglas. Copies of proposal documents obtained from any other source are not considered official copies. The City cannot guarantee the accuracy of any information not obtained from the official source and is not responsible for any errors contained by any information received from alternate sources. Only those Consultants who obtain proposal documents from the City are guaranteed access to receive addendum information if such information is issued. If you obtained this document from a different source, it is recommended you contact the City of Douglas at [douglas@douglasmichigan.gov](mailto:douglas@douglasmichigan.gov) and obtain an official copy.

### **Responsibility for Services:**

The selected consultant will assume responsibility for all services offered in the proposal, including any services provided by subcontractors. Furthermore, the City will consider the consultant to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. The consultant is responsible for adherence by the subcontractors to all provisions of the contract.

### **EPA Requirements:**

Please see <https://www.epa.gov/grants/best-practice-guide-procuring-services-supplies-and-equipment-under-epa-assistance>, which describes the financial transactions covered by the competitive procurement requirements and other rules that the City must follow when awarding and administering EPA funded contracts.

### **Contracting with Disadvantaged Business Enterprises:**

It is the US EPA policy to award a fair share of contracts to disadvantaged business firms. Accordingly, affirmative steps must be taken to ensure that disadvantaged businesses are utilized when possible as sources of supplies, equipment, and services. The City will ensure, to the fullest extent possible, that at least the US EPA "fair share" objectives for prime Consultants and subcontracts are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, historically black colleges, and universities. The Consultant shall agree to support the US EPA's disadvantaged business enterprise contract procurement program ensuring those businesses' participation in subcontracts.

Affirmative steps include the following as a minimum:

1. Include qualified disadvantaged businesses on solicitation lists
2. Ensuring that disadvantaged businesses are solicited whenever they are potential sources
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit disadvantaged business participation
4. Where the requirements permit, establishing delivery schedules which will encourage participation by disadvantaged businesses
5. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce as required
6. Consultants are encouraged to procure goods and services from disadvantaged businesses

**Equal Employment Opportunity:**

The Consultant agrees to comply with all federal, state, and local laws, resolutions, ordinances, rules, regulations, and executive orders pertaining to unlawful discrimination on the basis of race, color, religion, national origin, sex, marital status, sexual orientation, disability, or age in the performance of any contract awarded. When required by law, or upon request by the City, the consultant shall furnish a written affirmative action plan.

The Consultant shall carry out all applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Consultant to carry out these requirements is a material breach of any contract awarded, which may result in the termination of contracts or other legally available remedies.

**Applicable Laws and Regulations:**

The selected Consultant must comply with and obtain all applicable federal, state, and local laws, regulations, licenses, and permits. The Consultant shall provide proof that they have the necessary permits and licenses to conduct such work.

**Public Information:**

Documents submitted to the City related to this RFP are subject to the requirements of the Freedom of Information Act and may be deemed public records. The City will conduct a formal public opening of submittals. All submittals will be kept on file for review by interested parties in the City offices located at 86 W. Center Street, Douglas, MI 49406.

**Type of Contract and Contract Term:**

The agreement will be based on a fixed price basis, with payment terms to be negotiated with the selected consultant. The term of the agreement shall be for approximately three years.

**Payment Procedures:**

Payments will be made no more than monthly, for work specified and completed, and in accordance with the budget developed. The City Council typically approves invoices on the first and third Monday of each month. Invoices submitted for payment should be received on the Wednesday preceding the City Council meeting by noon of that day.

**Reporting Requirements:**

The Consultant shall be responsible for maintaining and submitting reports as required by the grant and/or by the City.

**Responsibilities of the Consultant:**

Upon entering into a contract, the Consultant shall:

- A. Be responsible for all performance items per the contract, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and supplies, vehicles, transportation services, and permits required to perform and complete the scope of work.
- B. Require all vehicle drivers to carry a valid driver's license for the class of vehicle operated. Vehicle operators shall obey all traffic regulations, including weight and speed limits.
- C. Provide a safety plan for emergencies and/or accidents.

**Holidays:**

No site work will be allowed on the following municipally observed holidays unless authorized by the City: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Observed holidays may fall on days other than the calendar holiday; therefore, it is advised to consult with the City prior to commencing work.

**Non-Performance / Default:**

Consultant shall be contacted if issues and complaints arise regarding the Consultant's overall performance of services to the City. Specifics will be brought to the Consultant's attention for immediate resolution to the full satisfaction of the City. If satisfactory resolution by the Consultant is not made, it may be grounds for immediate termination of the contract and no proration of payments.

If the Consultant fails to provide service or response to the complaint/issue for fourteen (14) calendar days, and if such lack of observance is caused by the fault or negligence of the Consultant, and if such lack of observance is not due to extreme weather conditions or other acts of God, strikes, civil disorders, or any other circumstances beyond the control of the Consultant that prevent the timely accomplishment of its obligations, then the City shall reserve

the right to determine if there has been sufficient cause to justify such lack of observance.

If in the City's judgement sufficient cause has not been demonstrated, then the City shall serve notice either personally or by affixing such notice to the premises of the servicing location of the Consultant stating that this contract shall be deemed in default if the Consultant does not take action to reestablish the schedule within fourteen (14) calendar days of said notice. If after the fourteen (14) calendar day period, the Consultant has not made the necessary corrections, the City shall take such steps as are necessary to furnish services according to the collection requirements provided for in this contract. The Consultant shall be liable for all costs of such steps from the date of notice of default. The City further reserves the right to terminate this contract for such non-performance.

**Indemnification:**

The selected consultant shall hold and save harmless the City, its officers, agents, volunteers, and employees from liability of any kind in the performance of this contract. Further, the selected consultant shall indemnify, save harmless, and undertake the defense of the City, its City Council, agents, servants, and employees from and against any and all claims, suits, actions, damages, or causes of action arising during the term of this contract, for any personal or bodily injury, loss of life, or damage to property arising directly or indirectly from consultant's operation pursuant to this contract and from and against all costs, counsel fees, expenses, and liabilities incurred in and about any such claims, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders or judgments which may be entered therein. The City shall notify the consultant within fourteen (14) days of receipt by the City of any claim, suit, or action against the City arising directly or indirectly from the operations of the consultant hereunder, for which the City may be entitled to a claim or indemnity against the consultant, under the provisions of this contract. consultant shall have the right to control the defense of any such claim, suit, or actions. The consultant shall also be liable to the City for all costs, expenses, attorneys' fees, and damages which may be incurred or sustained by the City by reason of the consultant's breach of any of the provisions of the contract. Consultant shall not be responsible for negligent acts of the City or its employees.

**Silence of Specifications:**

The apparent silence of these specifications and any supplemental specifications as to any detail, or the omission from them of a detailed description concerning any point, shall be regarded as meaning only that the best commercial practices are to prevail and only material of the first quality and correct type, size and design are to be used. All workmanship is to be of first quality. All interpretations of these specifications will be made upon the basis of this statement.

**Termination:**

- A. **For Fault:** If the City determines that the consultant has failed to perform or will fail to perform all or any part of the services, obligations, or duties required by the contract, the City may terminate or suspend the contract in whole or in part. Upon written notice to



the consultant specifying the failure of performance, the consultant shall have fourteen (14) calendar days from receipt of the notice to correct the violations. If the consultant does not correct the violations during the period provided for in the notice, the contract shall be terminated upon expiration of such time. Upon termination, any payment due to the consultant at time of termination may be adjusted to cover any additional costs the Municipality incurred by reason of the termination of the contract. No proration of payments will be given for services not yet performed. This provision for termination shall not limit or modify any other right to the Municipality to proceed against the consultant at law or under the terms of the contract.

- B. **Not for Fault:** Whenever the City determines that termination of the contract in whole or in part is in the best interest of the City or in the event that termination is required by any state or federal agency, the City may terminate the contract by written notice to the consultant specifying the services terminated and the effective date of such termination. Upon termination, the consultant shall be entitled to and the City shall pay the costs actually incurred in compliance with the contract until the date of such termination.

#### **General Terms and Conditions:**

- A. Default - No proposal will be accepted from, or contract awarded to any person, firm, or corporation that is in arrears or is in default to the City of Douglas upon debt or contract, or that is in default as surety or otherwise, or failed to perform faithfully any previous contract with the City.
- B. Acceptance of Terms and Conditions – By submitting a proposal, the Consultant agrees to be governed by the terms and conditions set forth in this RFP, as well as applicable federal, state and local laws. Any exceptions to the specifications must be clearly identified in the last section of the Consultant's response.
- C. Rejection of Proposals – If material errors are found in a proposal, or if a proposal fails to materially conform to the requirements of the RFP, the City may reject the proposal. Data and information submitted in the proposal should be prepared in a manner designed to provide the City with a straightforward presentation of the Consultant's capability to satisfy the requirements of this RFP.
- D. Collusion - More than one proposal from the same consultant under the same or different names will not be considered. Reasonable grounds for believing that a consultant is submitting more than one proposal will cause the rejection of all proposals in which the consultant is involved. The City reserves the right to disqualify any submittal, before or after opening, upon evidence of collusion, intent to defraud or any other illegal practice on the part of the consulting firm.
- E. Local Preference – Per the City's Purchasing Ordinance, any purchase or contract to be made with entirely City funds may be awarded to the lowest written quoted price or lowest evaluated bid price from a responsive and responsible local vendor provided that the local vendor's quote or bid is no higher than the lowest responsive and responsible non-local vendor by more than two percent (2%) or two thousand dollars (\$2,000), whichever is less. A local vendor is defined as any person, firm, partnership, corporation

(including franchises or branches) licensed to conduct business within the City, physically operating within the corporate boundaries of the City, and subject to City taxes.

- F. Lobbying – Consultants are prohibited from lobbying City of Douglas employees, advisory committee members, or elected officials regarding this RFP or contract, or during the pendency of any award protest by the consultant/protestor or any member of the consultant/protestor's staff, an agent or employee of the consultant/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the RFP or contract, or has a pending proposal protest is strictly prohibited until either an award is formal or any protest is formally resolved by the City. For purposes of this provision, lobbying activities shall include but not be limited to, influencing, or attempting to influence action or non-action in connection with any RFP or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of person and/or entities specified in this provision. Such actions may cause any RFP or contract to be rejected or disqualified from consideration.
- G. Trade Secret - Any language contained in the consultant's proposal purporting to require confidentiality of any portion of the proposal, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Michigan law, shall be void. The City shall be the final arbiter of whether any information contained in the consultant's proposal constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the consultant agrees to defend, indemnify, and hold harmless the City, its officers, employees, volunteers, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO MICHIGAN LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

- H. Exclusivity of Contract – Any contract between the consultant and the City is exclusive and non-assignable, and any attempted assignment, delegation, transfer, or conveyance is void. The selected consultant will be required to assume responsibility for all services outlined in this bid, whether or not that firm provides them or subcontracts them to another entity. None of the consultant's duties under the contract shall be subcontracted or transferred without prior written consent of the City. Any subcontract or transfer of duties under the contract shall be in writing. The City will consider the consultant to be the sole point of contact with regard to contractual matters, including payment of any or all charges resulting from the contract. If any of the work is to be subcontracted, the consultant awarded the bid must provide a complete description of the work to be subcontracted and a description of the subcontractor's organization and capabilities. The consultant must list all subcontractors to be used in the proposal. The consultant is fully responsible for adherence by the subcontractor to all provisions of the contract and its specifications.

- I. The Request for Proposal and the selected consultant's response will be incorporated into the final contract as attachments.
- J. The consultant will obtain at its own expense all necessary permits and licenses required by any and all authorities having jurisdiction over the consultant's activities.
- K. If any provision or portion thereof of the contract is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this contract to either party, such provision shall not render unenforceable this entire contract. Rather, the parties intend that the remaining provisions shall be administered as if the contract did not include the invalid provision.

### **Insurance Requirements:**

If the Consultant fails to provide or maintain in full force and affect the insurance coverage required at any time during the term of the contract, this shall be deemed default, and the City shall serve notice of such default as stated above. If the Consultant has not corrected the default within the period of time allowed, as stated in the notice, the City shall reserve the right to terminate the contract.

Violation of the contract or of any federal or state law or City Ordinance may result in a cancellation of the contract without any proration of payments.

- A. Upon award of a contract, consultant shall maintain at its expense during the entire term of the contract, the following insurance per Ordinance 37.12 DOCUMENTS REQUIRED FOR PURCHASE OR CONTRACT, section (C).
  - 1. **Commercial General Liability Insurance** - The consultant shall procure and maintain during the life of this contract, Commercial General Liability Insurance, Personal Injury, Bodily Injury and Property Damage on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** (One Million Dollars) per occurrence combined single limit.
  - 2. **Broadened Auto Pollution Liability Form CA 9948:** The consultant shall acquire and maintain Broadened Pollution Liability Form CA 9948 in the amount of \$1,000,000 per occurrence. The City shall be named as additional insured.
  - 3. **Site Specific Pollution Liability Coverage:** The contractor shall acquire and maintain Site Specific Pollution Liability Coverage in the amount of \$5M per occurrence, with a \$5M aggregate in claims made form. Such coverage shall provide for a three-year discovery period. The City shall be named as additional insured.
  - 4. **Automobile Liability** insurance covering all owned, hired and non-owned vehicles with Personal Protection insurance to comply with the provisions of the Michigan No Fault Insurance Law including Residual Liability insurance with minimum bodily injury limits of **\$1,000,000** (One Million Dollars) each person and

**\$1,000,000** (One Million Dollars) each occurrence and minimum property damage limits of **\$1,000,000** (One Million Dollars) each occurrence.

5. **Worker's Compensation** insurance in the amount required by state statute.

- B. All policies shall name the consultant as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice date to the City; alternately, consultant may agree to provide notice of such cancellation or reduction.
- C. The City of Douglas shall be named as Additional Insured for General Liability and Auto Liability and shall also be listed as a certificate holder. Certificates of Insurance evidencing such coverage shall be submitted to the City of Douglas, at [douglas@douglasmichigan.gov](mailto:douglas@douglasmichigan.gov) or at PO Box 757, Douglas, MI 49406 to commencement of performance under this contract and at least fifteen (15) days prior to the expiration dates of expiring policies. A current certificate of insurance must be on file with the City for the duration of the contract. Said coverage shall be primary coverage rather than any policies and insurance self-insurance retention owned or maintained by the City. Policies shall be issued by insurers who endorse the policies to reflect that, in the event of payment of any loss or damages, subrogation rights under those agreement documents will be waived by the insurer with respect to claims against the City.
- D. The consultant shall be responsible for payment of all deductibles contained in any insurance required hereunder.
- E. If, during the term of the contract, changed conditions or other pertinent factors should in the reasonable judgment of the City render inadequate insurance limits, the consultant will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be affected at the consultant's expense, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City.
- F. The provisions requiring the consultant to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the consultant under any contract awarded.
- G. The City has the authority to vary from the specified limits as deemed necessary.



**THIS SECTION MUST BE SUBMITTED ALONG WITH RESPONSE IN ORDER FOR PACKAGE TO BE CONSIDERED COMPLETE AND ACCEPTABLE.**



## **SECTION 6 PROPOSAL FORM**

### **TO BE COMPLETED AND SUBMITTED**

Having carefully examined the specifications and any other applicable information, the Consultant proposes to furnish all items necessary for, and reasonably incidental to the proper completion of this bid. This proposal is true and accurate to the best knowledge of the Consultant. It is understood that a proposal may be rejected by the City if the information it contains is found to be false or inaccurate. The Consultant certifies that as of the date of this bid, the Consultant is not in arrears to the City of Douglas for debt or contract.

The Consultant submits this bid and agrees to meet or exceed all of the City's requirements and specifications unless otherwise indicated in writing and attached hereto.

The Consultant understands and agrees, if selected, to enter into a contract with the City and to provide proof of any required insurance and bonds. The Consultant shall comply with all applicable federal, state, local and ordinances, codes, laws, rules, and regulations and obtain any required permits for this work.

The Consultant understands that it is the intent of the City of Douglas to enter into a contract with the Consultant whose proposal is the most conforming of this solicitation and will be most advantageous to the City of Douglas, provided it has been submitted in completion and accordance with the proposal requirements. If a proposal is selected, it will be the most advantageous regarding customer service, the rate structure, the Consultant's experience and qualifications, and capabilities to provide the specified services, and other factors which the City of Douglas may consider. The City expressly reserves the right to accept an offer other than the lowest responsive cost to the City and reserves the right to negotiate any terms prior to award. If acceptable terms cannot be negotiated, the City will abandon the negotiations and begin negotiations with the next ranked proposal until agreeable terms are concluded. City Council has the sole authority to award contracts at their pleasure.







## SECTION 7 WORKER'S COMPENSATION CERTIFICATION

- I hereby certify that effective the date of this contract with the City of Douglas and at all times in the performance of such contract that:

I have and will maintain in full force and effect the Workers Compensation Insurance in compliance with the laws of the State of Michigan, and will provide a Certificate of Insurance to the City upon request, with the following insurance company:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Agent's Name, Address, and Telephone Number

\_\_\_\_\_  
Policy Number and Effective Date

OR

- I will perform said contract myself and do not have and will not have any employee or employees assisting me with the performance of the contract and am not required by the Laws of the State of Michigan to obtain and maintain a Worker's Compensation Insurance in the performance of this contract.

I understand that this statement is made as a material part of the contract, which I have, or will execute, with the City of Douglas.

\_\_\_\_\_  
Signature of Consultant

\_\_\_\_\_  
Date



## SECTION 8 RPF EVALUATION FORM

Reviewer Name: \_\_\_\_\_

### INSTRUCTIONS TO EVALUATORS:

Per City Charter – Public servants shall treat public office as a public trust, using the powers and resources of public office only to advance public interests, and not to attain personal benefits or pursue any private interest incompatible with the public good. Public servants shall employ independent, objective judgement in performing their duties, deciding all matters on the merits, free from conflicts of interest and apparent improper influences.

The Evaluator understands that it is the intent of the City of Douglas to enter into a contract with the Consultant whose proposal is the most conforming of this solicitation and will be most advantageous to the City of Douglas, provided it has been submitted in completion and accordance with the proposal requirements. If a proposal is selected, it will be the most advantageous regarding service provided, the cost, the Consultant’s experience and qualifications, and capabilities to provide the specified services, and other factors which the City of Douglas may consider. The City expressly reserves the right to accept an offer other than the lowest responsive cost to the City and reserves the right to negotiate any terms prior to award. If acceptable terms cannot be negotiated, the City will abandon the negotiations and begin negotiations with the next ranked proposal until agreeable terms are concluded. City Council has the sole authority to award contracts at their pleasure.

Evaluators will use the attached form to evaluate proposals. It is recommended that each evaluator read each proposal first. Then, do your evaluation during a second read of each proposal. In each category, rank either: **non-complaint, minimal compliance, compliant, exceeds compliance**. To assist in the evaluation process, please reference Section 4 - Proposal. You may use a blank sheet to record key notes during your evaluation.

Evaluation Factor	Proposer #1	Proposer #2	Proposer #3	Proposer #4
Completeness of Proposal				
Project Understanding				
Project Approach				
Qualifications and Experience				
Staff Experience				
Outreach Experience				
Innovation				
References				
Cost Proposal				

**The City of the Village of Douglas  
86 West Center Street, P.O. Box 757  
Douglas, Michigan 49406-0757**

**U. S. Environmental Protection Agency  
Brownfield Cleanup Grant Program  
Work Plan**

**Former Haworth Manufacturing Site  
200 Blue Star Highway, Douglas  
Allegan County, Michigan 49406**

**June 9<sup>th</sup>, 2022**

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*Former Haworth Manufacturing Site  
USEPA Brownfield Cleanup Grant Work Plan  
200 Blue Star Highway, Douglas, Michigan*

**Cleanup Grants**

This project supports Goal 1 in EPA's FY 2018-2022 Strategic Plan, which is to deliver "a healthier, cleaner environment by delivering a cleaner, safer, and healthier environment for all Americans and future generations by carrying out the agency's core mission", by revitalizing land and preventing contamination (Objective 1.3). Specifically, the recipient will carry out cleanup activities to encourage revitalization and reuse of brownfields sites. The Project Period is 3 years.

Catalog of Federal Domestic Assistance Number (CFDA): 66.818  
RFP Number: EPA-OLEM-OBLR-21-06

**The City of the Village of Douglas  
Project Contact:**

Rich LaBombard, City Manager  
86 West Center Street, P.O. Box 757,  
Douglas, Michigan 49406-0757

Phone: (616) 566-9607  
Email: [rlabombard@douglasmi.gov](mailto:rlabombard@douglasmi.gov)

**Project Period: 10/01/2022 - 09/30/2025**

**I. Proposed Outputs and Outcomes**

Grant funds will be used to complete environmental remediation of hazardous substances contamination at the former Haworth Manufacturing Site, a 7.18-acre site located at 200 Blue Star Highway in the City of Douglas (“the City”).

The primary expected outcome is the eventual cleanup and redevelopment of this property. Preliminary conceptual plans include an estimated 80,000 square feet of commercial retail and restaurant space over 7 two-story buildings, and 52,000 square feet of live-work space over 2 buildings. Several elements of the initial site design concept address the City’s placemaking goals, including the preservation of the City’s character as a quaint destination community. These features involve incorporating larger building setback distances, the relocation of parking areas behind the proposed buildings, and implementing streetscape improvements that are in accordance with the City’s greenspace and tree ordinances. The preliminary conceptual plan also incorporates placemaking features that includes approximately 800 feet of bike lane along the Blue Star Highway, and 700 feet of sidewalk improvements along Ferry Street.

**II. Introduction and Environmental Results**

The United States Environmental Protection Agency (U.S. EPA) has awarded the City of the Village of Douglas, Michigan, a Brownfield Cleanup Grant to conduct remediation activities associated with the 7.18-acre former Haworth Manufacturing Site located at 200 Blue Star Highway in the Village of Douglas. The \$500,000 grant will be dedicated to removing hazardous substances contamination from the site.

The target property consists of a single parcel that was initially developed as a fallow orchard with two small structures as early as 1938. By the 1940s, the property was redeveloped into its current configuration, which consists of two utility buildings and a 150,300 square foot, single-story industrial building with approximately 15 truck bays facing Blue Star Highway. From the 1940’s through the mid-1970’s the property’s extensive history included plating, buffing, zinc die casting, metal forming, stamping, phosphatizing, and painting metal parts. Between the years of 1976 and 2014, the property was owned and occupied by Haworth Inc. (formerly Haworth Manufacturing) who used the facility to manufacture furniture. Since 2014, the site has been vacant.

To assist in leveraging funding opportunities for cleanup and redevelopment, the City acquired the target property in 2019. In 2015, Phase I and II Environmental Site Assessments (ESAs) were conducted to review previous assessments and investigate contamination from polychlorinated biphenyls (PCBs) and volatile organic compounds (VOCs) beneath the building, as well as evaluate pathways related to vapor intrusion. Sampling conducted in the former die cast pit area (eastern portion of the building) identified concentrations of PCBs above one part per million (ppm). Analytical data also suggests that trichloroethene (TCE) contamination exceeding Michigan’s Residential and Nonresidential Drinking Water, Groundwater Surface Water Interface, and Groundwater Volatilization to Indoor Air cleanup criteria, has migrated approximately 1,600 feet north-northwest of the target property, offsite.

In May 2018, a Remedial Alternatives Evaluation (RAE) was conducted to determine options to address the risks associated with the known VOC contaminated groundwater and PCB contaminated soil. The RAE also summarized the results of previous site investigations that were conducted between 2015 and 2017 to define the horizontal and vertical extent of PCB contaminated soil impact. These investigations identified soils impacted by PCBs at concentrations ranging from 3.4 ppm to 5,600 ppm, which are above the Toxic Substances Control Act (TSCA) Subpart D Cleanup Standard for high occupancy areas. The horizontal and vertical extent of the PCB impact were determined to be in the north central and eastern portions of the east room of the building, at depths ranging from 1’ to 15.5’ below ground surface (bgs). A cleanup strategy was prepared that involves addressing the contamination from the source areas on the target property by first addressing the PCB contamination. This approach will assist in eliminating one of the concerns identified and as a result, in conjunction with other leveraged sources, better position the property to be marketed for redevelopment.



In 2022, the City demolished the building to prepare for PCB cleanup activities. The floor and paved areas were left in place to serve as a cap to the contamination below.

### **III. Project Overview**

U.S. EPA has awarded the City of Douglas \$500,000 for the cleanup of hazardous substances at the former Haworth Manufacturing Site.

The project involves the utilization of a risk-based cleanup approach for the PCB contamination using the TSCA Subpart D Cleanup Standards for high occupancy uses. Prior to the commencement of cleanup activities, a risk based TSCA PCB Cleanup work plan will be prepared for EPA review and approval. Since the state of Michigan does not have its own TSCA program, the City has already engaged EPA TSCA staff and has started the process of outlining a preliminary approach to preparing the risk based TSCA PCB Cleanup work plan for high occupancy uses based on the available existing data. Cleanup activities are expected to include the disposal of approximately 1,670 tons of contaminated soil, approximately 460 tons of contaminated concrete, the import and placement of approximately 1,000 cubic yards of clean fill material, and the installation and maintenance of an appropriate surface cover consisting of a 10" compacted clay cap over an estimated 8,275 square foot area. Contaminated materials will be transported to a licensed facility capable of meeting applicable disposal requirements.

The following tasks comprise the City of Douglas Cleanup Grant project:

1. Community Involvement and Outreach
2. Cleanup Planning
3. Cleanup Activities
4. Grant Management

### **IV. Management and Coordination**

Project management and grant administration responsibilities will be handled by the City Manager of the City of Douglas, Mr. Rich LaBombard. As the City Manager, Mr. LaBombard oversees the day-to-day operations of the City which includes, public works, asset management, and overseeing special projects such as road reconstruction, utility improvements, facility improvements and construction of new assets. Prior to his employment with the City, he has successfully procured and managed over \$5 million in grants over the past five years, and has demonstrated experience with project management, grant writing, technical writing, energy efficiency, energy conservation and renewable energy. Mr. Matt Smith, the City's Treasurer will assist Mr. LaBombard with the financial management of the grant.

### **V. Work to be Performed**

The schedule presented in the task tables below assumes that the cooperative agreement with U.S. EPA will be executed in the Fall of 2022. After the execution of the cooperative agreement, the City will issue an RFP to identify and procure the services of a qualified environmental consultant. It is anticipated that the City will engage in a professional service contract with the selected consultant by the end of 2022.

#### **Task 1: Community Involvement and Outreach**

Implementation activities include the development of a Community Involvement Plan which outlines community participation activities, resident notification of cleanup schedules and progress, and a minimum of three public meetings (pre, interim, and post) to solicit input, educate, and update the community of cleanup progress. This task also includes the attendance of one staff member at the next EPA National Brownfield Conference 2024.

*Deliverables:* Community Involvement Plan, meeting minutes documenting each Community outreach/involvement/meetings, copies of handout materials, or other materials developed.



**Task 2: Cleanup Planning**

Implementation activities includes the finalization of the Analysis of Brownfield Cleanup Alternatives (ABCA), development and approval of a risk based TSCA PCB Cleanup work plan/model, preparation of bids and specifications, and solicitation of competitive pricing.

The TSCA PCB Cleanup work plan/model will include updated cleanup volume calculations that incorporates the additional site assessment data from the EPA TBA investigation that is currently in progress. It is anticipated that the approval process of the risk based TSCA PCB Cleanup work plan will take approximately one year and require the submittal of several drafts and ongoing correspondence with EPA TSCA staff before final approval is issued. The attendance of a pre-bid meeting and site walkover will be mandatory for qualified contractors to submit competitive pricing. The retaining of a qualified contractor will abide by EPA Guidelines and the City's established procurement process.

*Deliverables:* Final ABCA, Risk Based TSCA PCB Cleanup Work Plan, Bid Package/Solicitation, Prebid Meeting/Site Walkover Attendance List, and Bid Tabulation and recommendation to award.

**Task 3: Cleanup Activities**

Activities include the implementation the risk based TSCA PCB Cleanup work plan that involves the removal and disposal of contaminated soil and concrete surface material at an approved disposal facility, the import and placement of clean fill material, environmental sampling and oversight, and the installation and maintenance of appropriate surface cover. Cleanup of the PCB contaminated areas will be compliant with the cleanup standards outlined in TSCA Subpart D. Environmental sampling will be conducted by the consultant under an approved Quality Assurance Project Plan (QAPP).

*Deliverables:* QAPP, daily observation reports, project photos, volume of contaminated materials removed. A summary of cleanup activities will also be provided in the quarterly progress reports.

**Task 4: Grant Management**

Activities includes the preparation and submittal of required progress reports, input of project data into ACRES, preparation and submittal of a final project report, and ongoing correspondence with EPA and EGLE as appropriate. The quarterly reports will describe progress on each defined task in this Work Plan. The Annual Financial Report and the Annual Disadvantaged Business Enterprise (DBE) Report will be prepared in October of each year.

*Deliverables:* Quarterly progress reports (11), ACRES entries, final project report.





**VI. Remediation Goals for the Project**

Cleanup of PCB contamination to the Risk-Based High-Occupancy TSCA standard will eliminate a significant cleanup cost, which would enable state brownfield tax increment financing feasible to implement the necessary due care response activities available for redeveloping property. Neither program would provide enough funding to fully address the cleanup of the PCB contamination and address due care response activities on their own. Surface barriers, vapor intrusion controls, or institutional controls are anticipated to address non-PCB related contamination which can be funded using state brownfield tax increment financing or state brownfield grants and loans.

Preliminary estimates include the removal and disposal of approximately 1,670 tons of contaminated soil, 460 tons of contaminated concrete, the import and placement of approximately 1,000 cubic yards of clean fill material, and the installation and maintenance of an appropriate surface cover consisting of a 10" compacted clay cap over an estimated 8,275 square foot area. Contaminated materials will be transported to a licensed facility capable of meeting applicable disposal requirements.

**VII. Project Budget**

Budget Categories		Project Tasks (\$642,000)				
		Task 1 Community Involvement	Task 2 Cleanup Planning	Task 3 Cleanup Activities	Task 4 Grant Management	Total
Direct Costs	Personnel	\$0	\$0	\$0	\$0	\$0
	Fringe Benefits	\$0	\$0	\$0	\$0	\$0
	Travel	\$0	\$0	\$0	\$0	\$0
	Equipment	\$0	\$0	\$0	\$0	\$0
	Supplies	\$0	\$0	\$0	\$0	\$0
	Contractual	\$0	\$25,000	\$475,000	\$0	\$500,000
	Other	\$0	\$0	\$0	\$0	\$0
<b>Total Direct Costs</b>		\$0	\$25,000	\$475,000	\$0	\$500,000
Indirect Costs		\$0	\$0	\$0	\$0	\$0
<b>Total Federal Funding</b>		\$0	\$25,000	\$475,000	\$0	\$500,000
<b>Cost Share</b>		\$11,500	\$0	\$120,500	\$10,000	\$142,000
<b>Total Budget</b>		\$11,500	\$25,000	\$595,500	\$10,000	\$642,000*

*\*The City is aware that the Total Budget will require a financial commitment that exceeds the 20% match requirement required by the grant guidelines.*

**Task 1: Community Involvement and Outreach**

*Contractual Costs:* The cost of preparing presentations for three meetings, which includes the preparation of handout materials and flyers and consultant time to assist the community outreach, and travel to the 2024 EPA Brownfield Conference. This cost of this task is estimated to be \$11,500 which will be paid for with a combination of grant funds and the City's match.

- \$7,500 (City match) is budgeted for meetings at \$2,500/meeting, 20 hrs./meeting at an average rate of \$125/hr.
- \$4,000 (EPA Funds) is budgeted for attendance to the 2024 EPA Brownfield Training Conference. This includes registration fees (\$350), a day per-diem (\$2,600 over four days), lodging (\$350 over 3 nights) and air travel (\$700).

### **Task 2: Cleanup Planning**

*Contractual Costs:* The total estimated cost to complete cleanup planning activities, which includes finalizing the ABCA, preparing the Risk Based TSCA PCB Cleanup Work Plan, and scoping and bidding the project is \$25,000.

- The cost of preparing and submitting a TSCA PCB Cleanup Work Plan for EPA TSCA approval is estimated to require 150 hours, at an average rate of \$125/hr. for an estimated cost of \$18,750.
- The cost of finalizing the ABCA is estimated to require 10 hours, at an average rate of \$125/hr. for an estimated cost of \$1,250.
- The cost of scoping, bidding, and selecting a qualified contractor to complete the cleanup activities is estimated to require 40 hours, at an average rate of \$125/hr. for an estimated cost of \$5,000.

### **Task 3: Cleanup Activities**

*Contractual Costs:* The total estimated cost of cleanup activities (to be overseen by the environmental consultant) is \$595,500, which will be paid for with a combination of grant funds and the City's match.

- The cost of excavation, transportation and disposal of PCB contaminated concrete and soil is estimated to be \$532,500 based on a unit cost of \$250/ton and a preliminary estimate of 1,670 tons of soil, and 460 tons of concrete.
- The import and placement of clean fill is estimated to be \$20,000 based on a cost of \$20/cubic yard and a preliminary estimate of 1,000 cubic yards.
- The installation and maintenance of appropriate surface cover consisting of a 10" compacted clay cap is estimated to be \$3,000 based on a unit cost of \$10.00/cubic yard and a preliminary estimate of 300 cubic yards.

### **Task 4: Grant Management**

This task will be paid as part of the City's match and is estimated to be \$10,000 (80 hours at \$125/hr.).



**Phase II Environmental Site Assessment  
Former Haworth Property**

**200 South Blue Star Highway  
Douglas, Allegan County, Michigan**

Prepared for:

U.S. Environmental Protection Agency

Region 5

25063 Center Ridge Road

Westlake, Ohio 44145

Prepared by:

Tetra Tech, Inc.

Region 5 Superfund Technical Assessment and Response Team

1 South Wacker Drive, 37<sup>th</sup> Floor

Chicago, Illinois 60606

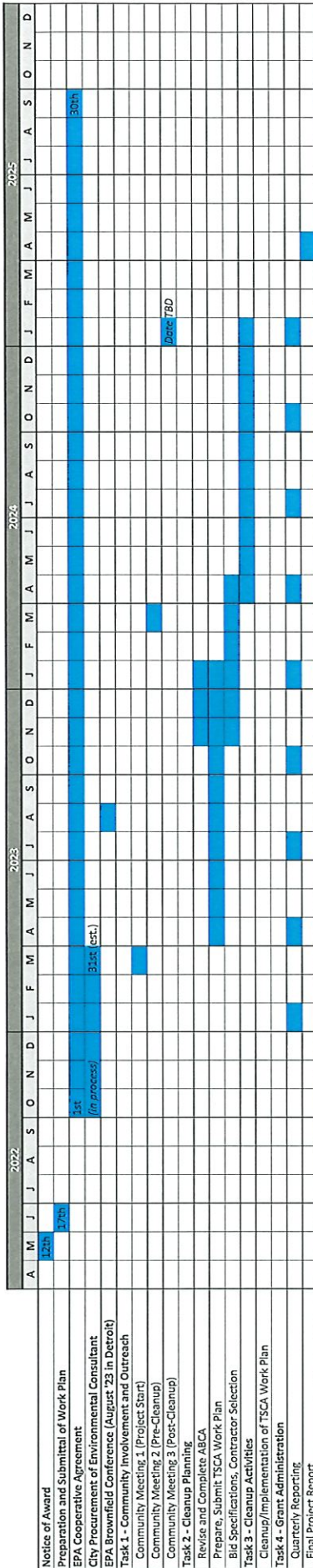
October 2022



Follow Link to City of Douglas website for full report:

[https://douglasmigov.com/wp-content/uploads/2022/11/TBA-Former-Haworth\\_Phase-II-Report\\_DTN-905\\_101422.pdf](https://douglasmigov.com/wp-content/uploads/2022/11/TBA-Former-Haworth_Phase-II-Report_DTN-905_101422.pdf)

200 Blue Star Highway  
EPA Cleanup Grant Timeline



Budget Categories	Project Tasks (\$642,000)				Total
	Task 1 Community Involvement	Task 2 Cleanup Planning	Task 3 Cleanup Activities	Task 4 Grant Management	
Personnel	\$0	\$0	\$0	\$0	\$0
Fringe Benefits	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0
Equipment	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0
Contractual	\$0	\$25,000	\$475,000	\$0	\$500,000
Other	\$0	\$0	\$0	\$0	\$0
Total Direct Costs	\$0	\$25,000	\$475,000	\$0	\$500,000
Indirect Costs	\$0	\$0	\$0	\$0	\$0
Total Federal Funding	\$0	\$25,000	\$475,000	\$0	\$500,000
Cost Share	\$11,500	\$0	\$120,500	\$10,000	\$142,000
Total Budget	\$11,500	\$25,000	\$595,500	\$10,000	\$642,000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
77 West Jackson Boulevard  
Chicago, Illinois

May 12, 2022

**VIA EMAIL**

Rich LaBombard  
City Manager  
The City of the Village of Douglas  
86 West Center Street  
Douglas, MI 49406

Dear Rich:

Congratulations on the selection of Douglas's proposal for a Brownfields Cleanup grant for the Hayworth property. I will be your Project Officer/Project Manager at U.S. EPA and I look forward to working with you over the next few years. I can be reached at 440-250-1717 or via email at [stimple.brad@epa.gov](mailto:stimple.brad@epa.gov).

The next step in the process is to complete an Application for Federal Assistance, also referred to as Standard Form 424 (SF-424). Although you submitted a draft SF-424A form with your proposal through [www.grants.gov](http://www.grants.gov) you will need to complete an SF-424 form and submit it with the rest of the required application forms. This award will be a Cooperative Agreement (CA), a type of grant for which there will be substantial federal involvement in reviewing project activities and providing technical assistance, as requested.

Please review the **Checklist for Brownfield 104(K) Applications** attached to this email. The SF-424 and additional forms identified on the checklist can be found at the following website:

<https://www.epa.gov/grants/epa-grantee-forms>

There are separate instructions for each form so please read them carefully. If you have any issues or questions, please give me a call or email. There is no standard form for the detailed, itemized budget but it is required to show how you calculated the amounts in each object class category. Please ensure you update form to include budget & project period start dates: **10/01/22** – **09/30/25**; that the Program Manager and Authorized Representative are two different people within the organization and, ensure money requested is in whole dollar form.

For tips on preparing the budget detail, see:

[https://www.epa.gov/sites/production/files/2014-08/documents/ogd\\_budget\\_detail\\_guidance\\_5\\_31\\_11.pdf](https://www.epa.gov/sites/production/files/2014-08/documents/ogd_budget_detail_guidance_5_31_11.pdf)

Prior to submission of the application forms you will also need to develop a Work Plan for the project. The Work Plan is based on your proposal and must be approved by me and submitted as

an attachment to your CA application. If you would like an example of a Work Plan, please ask and I can provide one.

The draft of your Work Plan should be submitted to me by email no later than **June 10th, 2022**, but earlier is better in-order to have EPA review and approve prior to submitting your final application.

Please submit the application package consisting of all forms on the attached checklist and the EPA-approved Work Plan no later than **COB July 1, 2022**, or earlier if possible. You must submit application packages by email to [region5applications@epa.gov](mailto:region5applications@epa.gov) and copy my email.

Please call me at 440-250-1717 at your earliest convenience so that we can discuss these grant requirements, and/or answer any questions you may have and get the application process completed as soon as possible.


Again, congratulations! I look forward to working with you on this new Cooperative Agreement.

Sincerely,

Brad Stimple  
Brownfields Project Manager  
U.S. EPA Region 5  
Westlake, Ohio

Attachments: Checklist for Brownfield 104(K) Applications  
Brownfields Grants Pre-Award Phase Fact Sheet



	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b> <b>Cooperative Agreement</b>		<b>GRANT NUMBER (FAIN):</b> 00E03211 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> BF	<b>DATE OF AWARD</b> 09/08/2022	
			<b>TYPE OF ACTION</b> New		<b>MAILING DATE</b> 09/13/2022
			<b>PAYMENT METHOD:</b> ASAP		<b>ACH#</b>
			<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> Contact EPA RTPFC at: rtpfc-grants@epa.gov
<b>RECIPIENT:</b> The City of the Village of Douglas 86 W Center ST Douglas, MI 49406-5110 <b>EIN:</b> 38-6007174			<b>PAYEE:</b> The City of the Village of Douglas 86 W Center ST Douglas, MI 49406-5110		
<b>PROJECT MANAGER</b> Rich LaBombard 86 West Center Street PO Box 757 Douglas, MI 49406-0757 <b>Email:</b> rlambombard@douglasmi.gov <b>Phone:</b> 616-566-9607		<b>EPA PROJECT OFFICER</b> Brad Stimple 25063 Center Ridge Road, ECW-W Westlake, OH 44145 <b>Email:</b> Stimple.Brad@epa.gov <b>Phone:</b> 440-250-1717		<b>EPA GRANT SPECIALIST</b> Kendra Kozak Assistance Section, MA-10J 77 West Jackson Blvd. Chiacgo, IL 60604-3507 <b>Email:</b> Kozak.Kendra@epa.gov <b>Phone:</b> 312-353-8834	
<b>PROJECT TITLE AND DESCRIPTION</b> Brownfield Cleanup Grant Funds for 200 Blue Star Highway Property  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. This agreement will provide funding to the Village of Douglas, MI to conduct remediation activities as authorized by CERLCA 104(k)(3) at the 200 Blue Star Highway Site (former Hayworth Manufacturing property). Specifically, this agreement will provide funding to the recipient to clean up a brownfield site(s). Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to conduct environmental site cleanup activities, will create a community involvement plan and administrative record for the site(s), and will report on interim progress and final accomplishments by completing and submitting relevant portions of the Property Profile Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). Further, the recipient will remediate the 200 Blue Star Highway brownfields site and anticipate holding mandatory community meetings, finalizing the Analysis of Brownfield Cleanup Alternatives, and submitting timely quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near the Village of Douglas, Michigan and the target community near the site. No subawards are included in this assistance agreement.					
<b>BUDGET PERIOD</b> 10/01/2022 - 09/30/2025	<b>PROJECT PERIOD</b> 10/01/2022 - 09/30/2025	<b>TOTAL BUDGET PERIOD COST</b> \$638,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$638,000.00		
<b>NOTICE OF AWARD</b>  Based on your Application dated 06/17/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$500,000.00. EPA agrees to cost-share 78.37% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$500,000.00. 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.					
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 5, U.S. EPA Region 5 Mail Code MCG10J 77 West Jackson Blvd. Chicago, IL 60604-3507			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 5, Land, Chemicals and Redevelopment Division R5 - Region 5 77 West Jackson Blvd., LP-17J Chicago, IL 60604-3507		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
Digital signature applied by EPA Award Official William Massie - Manager, Acquisition and Assistance Branch				<b>DATE</b> 09/08/2022	

### EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$500,000	\$500,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$138,000	\$138,000
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$638,000	\$638,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(3) & 104(k)(5)(E) & 104(k)(10)(B)(iii)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2205QEX057	22	E4	0500AG7	000D79	4114	-	-	\$500,000
									\$500,000

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$4,000
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$634,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$638,000
10. Indirect Costs: 0.00 % Base Not Applicable	\$0
11. Total (Share: Recipient <u>21.63</u> % Federal <u>78.37</u> %)	\$638,000
12. Total Approved Assistance Amount	\$500,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$500,000
15. Total EPA Amount Awarded To Date	\$500,000



## **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-october-1-2021-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>.

### **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): [rtfpc-grants@epa.gov](mailto:rtfpc-grants@epa.gov) and [kozak.kendra@epa.gov](mailto:kozak.kendra@epa.gov)
- MBE/WBE reports (EPA Form 5700-52A): [region5closeouts@epa.gov](mailto:region5closeouts@epa.gov) and [kozak.kendra@epa.gov](mailto:kozak.kendra@epa.gov)
- FINAL MBE/WBE reports (EPA Form 5700-52A): [reyes.dianne@epa.gov](mailto:reyes.dianne@epa.gov) and [kozak.kendra@epa.gov](mailto:kozak.kendra@epa.gov)
- 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: [stimple.brad@epa.gov](mailto:stimple.brad@epa.gov) and [kozak.kendra@epa.gov](mailto:kozak.kendra@epa.gov)
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: [stimple.brad@epa.gov](mailto:stimple.brad@epa.gov)

## **Programmatic Conditions**

### **FY22 Cleanup Cooperative Agreement**

#### **Terms and Conditions**

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

### **I. GENERAL FEDERAL REQUIREMENTS**

#### **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 2022 competition for Brownfield Cleanup cooperative agreements.
2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies



with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to conduct cleanups through a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer to ensure the proposed cleanup is protective of human health and the environment.

4. 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.

5. 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>.

6. 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). For more detailed information on complying with Davis-Bacon, please see the Davis-Bacon Addendum to these terms and conditions.

7. Refer to the General Term & Conditions for Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917).

## II. SITE OWNERSHIP/RECIPIENT ELIGIBILITY REQUIREMENTS

### A. Site Ownership

1. The CAR may only clean up the site(s) it solely owns that is specified in the workplan for this cooperative agreement. The CAR must retain ownership of the site(s) while Brownfield Cleanup 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(s). For the purposes of this agreement, the term "owns" means fee simple title unless EPA previously approved a different ownership arrangement.

### B. Continuing Obligations for CARs

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would 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.

#### C. Site Substitution and Cleanup Method Changes

1. The CAR must use funds provided by this agreement to clean up the brownfield site(s) in the EPA-approved workplan. The CAR shall not substitute a different brownfield site.

2. The CAR shall not make substantial changes to the cleanup method described in the workplan, including changes to the expected cleanup based on public comment or other reasons, without prior EPA approval.

### III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

#### A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions. EPA's Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 18 months from the date of award. If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, 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 an appropriate remediation plan is in place, institutional control development (if necessary) has commenced, initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed, and a solicitation for remediation services has been issued.

#### B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the recipient's performance to verify the results compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.
- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient).

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- d. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
  - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.
  - ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.
  - iii. With the consent of the recipient, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)

- iv. EPA staff participation in meetings, webinars, and similar events upon the request of the recipient or in connection with a co-sponsorship agreement.
- e. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate.
- f. Reviewing the qualifications of key personnel (EPA does not have the authority to select employees or contractors, including consultants, employed by the CAR or subrecipients receiving pass-through awards).
- g. Reviewing all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1. The EPA Project Officer will provide waivers to provisions a. – c. in Section III.B.1. 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 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. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to conduct site remediation activities vs. community engagement) and to allow the ability for work be performed concurrently at multiple sites.
  - 2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff to coordinate, direct, and oversee the brownfield site cleanup activities at a given site.
5. 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 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](http://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 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> 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.

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports unless approval is obtained from the EPA Project Officer to use an alternate format for reports.

2. The CAR must submit progress reports on a quarterly basis in ACRES. Quarterly progress reports must include:

a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Cleanup 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 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 (amount and type); 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.
- f. For local governments that are using cooperative agreement funds for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where 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).

- 4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and the cost share) disbursed by the CAR to clean up the specific property(ies) under this cooperative agreement.
- 5. 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., clean up started) and any final accomplishments (i.e., clean up completed, 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* and 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. CERCLA § 104(k)(10)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source unless a Federal statute provides otherwise) of at least 20% (i.e., 20% of the total federal funds awarded, which equates to 16.67% of total project costs as shown in the budget table of this agreement). 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. 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 necessary to clean up sites. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Ensuring cleanup activities at a particular site are authorized by CERCLA § 104(k) and the EPA-approved workplan.
- b. Ensuring that a 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 Involvement 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 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 cleanup activities.

2. **Local Governments Only** – If authorized in the EPA approved scope of work and budget narrative, up to 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 sum of direct EPA funding plus the CAR's cost share 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 \$31,900. 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.

### C. 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. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
- c. Construction, demolition, and site development activities that are not 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);
- d. Job training activities unrelated to performing a specific cleanup 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 cleanup; 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.

## V. CLEANUP REQUIREMENTS

### A. Authorized Cleanup 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 and documented in a decision document upon completion of the public comment period. The CAR must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.

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. If environmental data are collected as part of the brownfield 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 45 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. Additional information on the 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](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. Public Involvement and Community Outreach

1. All cleanup activities require a site-specific Community Involvement Plan. The plan must include providing reasonable notice to the community and opportunity for public involvement and comment on the proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.
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.
5. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

#### D. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the 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.

#### E. 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.

#### F. Completion of Cleanup Activities

1. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanup is complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

#### G. Inclusion of Additional Terms and Conditions

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative agreement 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 cleanups supported with Cleanup 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 the site(s) 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.

- 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 General 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.

## VII. 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>.