

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment		GRANT NUMBER (FAIN): 96841701	DATE OF AWARD 09/18/2020		
			MODIFICATION NUMBER: 6 PROGRAM CODE: V			
			TYPE OF ACTION Augmentation: Increase		MAILING DATE 09/25/2020	
			PAYMENT METHOD: ASAP		ACH# 80013	
RECIPIENT TYPE: State			Send Payment Request to: Las Vegas Financial Center- LVFC			
RECIPIENT: MT Department of Environmental Quality 1520 E. 6th Ave Helena, MT 59620-4541 EIN: 81-0302402			PAYEE: MT Department of Environmental Quality 1520 E. 6th Ave Helena, MT 59620-4541			
PROJECT MANAGER Carolina Balliew PO Box 200901 Helena, MT 59620-0901 E-Mail: carolina.balliew@mt.gov Phone: 406-444-6445		EPA PROJECT OFFICER Cinna Vallejos 1595 Wynkoop Street Denver, CO 80202-1129 E-Mail: vallejo.cinna@epa.gov Phone: 303-312-6376		EPA GRANT SPECIALIST Matthew Null Grants, Audit & Procurement E-Mail: Null.Matthew@epa.gov Phone: 303-312-6429		
PROJECT TITLE AND EXPLANATION OF CHANGES Superfund State Site-Specific Cooperative Agreement for the Libby Superfund Site This supplemental amendment increase the federal funding by \$600,000. All terms and conditions have been updated.						
BUDGET PERIOD 03/15/2017 - 06/01/2022	PROJECT PERIOD 03/15/2017 - 06/01/2022	TOTAL BUDGET PERIOD COST \$1,751,632.00	TOTAL PROJECT PERIOD COST \$1,751,632.00			
NOTICE OF AWARD						
<p>Based on your Application dated 12/15/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$600,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$749,845. 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.</p>						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129			ORGANIZATION / ADDRESS U.S. EPA, Region 8 EPR 1595 Wynkoop Street Denver, CO 80202-1129			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
Digital signature applied by EPA Award Official Sarah Hulstein -				DATE 09/18/2020		

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 149,845	\$ 600,000	\$ 749,845
EPA In-Kind Amount	\$ 0	\$	\$ 0
Unexpended Prior Year Balance	\$ 0	\$	\$ 0
Other Federal Funds	\$ 0	\$	\$ 0
Recipient Contribution	\$ 0	\$	\$ 0
State Contribution	\$ 0	\$	\$ 0
Local Contribution	\$ 0	\$	\$ 0
Other Contribution	\$ 0	\$	\$ 0
Allowable Project Cost	\$ 149,845	\$ 600,000	\$ 749,845

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.802 - Superfund State Political Subdivision and Indian Tribe Site Specific Cooperative Agreements	CERCLA: Sec. 104(d)(1)	2 CFR 200 2 CFR 1500 40 CFR 33 and 40 CFR 35 Subpart O

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2008LSA098	20	TR2B	08L	000DD2	4185	08BCOMOM	C003	600,000
									600,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$214,797
2. Fringe Benefits	\$85,784
3. Travel	\$36,372
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$489,061
7. Construction	\$0
8. Other	\$801,000
9. Total Direct Charges	\$1,627,014
10. Indirect Costs: % Base	\$124,618
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$1,751,632
12. Total Approved Assistance Amount	\$1,751,632
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$600,000
15. Total EPA Amount Awarded To Date	\$749,845

Administrative Conditions

A. General Terms and Conditions

The General Terms and Conditions of this agreement are updated in accordance with the link below. However, these updated conditions apply solely to the funds added with this amendment and any previously awarded funds not yet disbursed by the recipient as of the award date of this amendment. The General Terms and Conditions cited in the original award or prior funded amendments remain in effect for funds disbursed by the recipient prior to the award date of this amendment.

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-1-2019-or-later>. These terms and conditions are binding for disbursements and are in addition to or modify 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>.

B. State Grant Cybersecurity Condition

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) 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.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) 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 200.331(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.

C. Disadvantaged Business Enterprise (DBEs)

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33 except as described below based upon the associated class deviation.

EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B

A class exception to the following provisions of Subpart B of 40 CFR Part 33 has been issued suspending the EPA MBE/WBE certification program: §33.204(a)(3) providing that an entity may apply to EPA MBE or WBE certification after unsuccessfully attempting to obtain certification as otherwise described in §33.204; and §33.205 through and including §33.211. The class exception was authorized pursuant to the authority in 2 CFR 1500.3(b).

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

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

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the

steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302 (a)-(d) and (i).

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

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

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A class exception to the entire Subpart D of 40 CFR Part 33 has been authorized pursuant to the authority in 2 CFR 1500.3(b). Notwithstanding Subpart D of 40 CFR Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

MBE/WBE REPORTING- SPECIFIC CHANGES PURSUANT TO CLASS DEVIATION, 40 CFR, Part 33, Subpart E

When required, the recipient agrees to complete and submit a “MBE/WBE Utilization Under Federal Grants and Cooperative Agreements” report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at <https://www.epa.gov/grants/epa-grantee-forms>.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category) with a cumulative total that exceed the threshold amount of \$250,000, including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just that portion which exceeds \$250,000.

Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502.

Programmatic Conditions

A. Health and Safety Plan

Before beginning field work, the recipient must have a health and safety plan in place providing for the protection of on-site personnel and area residents, unless specifically waived by the award official. This plan need not be submitted to EPA but must be made available to EPA upon request. The recipient's health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR § 1910.120, entitled "Hazardous Waste Operations and Emergency Response."

B. Quality Assurance

In accordance with 2 CFR 1500.11, the recipient must develop and implement quality assurance policies and practices that are sufficient to produce data of adequate quality to meet program objectives. These policies and practices must be documented in a Quality Management Plan (QMP). The QMP should be prepared in accordance with EPA QA/R-2: EPA Requirements for Quality Management Plans. The recipient's QMP should be reviewed and updated annually as needed.

Should there be multiple programs involved in a grant, cooperative agreement or interagency agreement, at the recipient's discretion, they may submit one of the following:

- a. A single QMP covering all the programs in the grant or agreement; or
- b. A separate QMP for each program receiving the grant or agreement funds.

The QMP must be submitted to the EPA Project Officer at least [Insert 30/45/60] days prior to the initiating of data collection or data compilation. The recipient cannot begin work involving environmental programs until the QMP has been approved by the EPA Project Officer and EPA Regional Quality Assurance Manager. Approval of the QMP may allow delegation of the authority to review and approve Quality Assurance Project Plans (QAPPs) to the recipient based on procedures documented in the QMP.

Quality Management Plan

In accordance with 2 CFR 1500.11, the recipient shall continue to implement and adhere to the Quality Management Plan (QMP) submitted to EPA. The QMP should be updated annually or as necessary based on the EPA QA/R-2: EPA Requirements for Quality Management Plans. This quality assurance requirement applies to all grants, cooperative agreements, contracts and interagency agreements that involve the use of environmental data.

QUALITY ASSURANCE PROJECT PLAN

In accordance with 2 CFR 1500.11, the recipient must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. 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 days prior to the initiating of data collection or data compilation. The QAPP is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

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

No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP. Additional information on these requirements can be found at the EPA Office of Grants and Debarment Web Site:

<https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>

C. Community Relations

The recipient must comply with the community relations requirements described in EPA policy and guidance, and in the National Contingency Plan (40 CFR § 300.155 - Public information and community relations).

D. Accounting requirements

The recipient's system must track expenses by site, activity, and, operable unit, as applicable, according to object class. The system must also provide control, accountability, and an assurance that funds, property, and other assets are used only for their authorized purposes. The recipient must allow an EPA review of the adequacy of the financial management system as described in 2 CFR § 200.302. The recipient's systems must comply with the appropriate allowable cost principles described in 2 CFR part 200 Subpart E—Cost Principles. The accounting system must use actual costs as the basis of all reports of direct site charges.

E. Reports

1. Progress

Recipient agrees to provide the following progress reports:

Quarterly progress reports and a final progress report on all activities identified in

the workplan in accordance with 40 CFR 35.6650. These reports will contain at a minimum:

a) an explanation of work accomplished during the reporting period, delays, or other problems, if any, and a description of the corrective measures that are planned. The recipient agrees to inform the EPA Project Officer as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

b) a comparison of the percentage of the project completed to the project schedule, and an explanation of significant discrepancies.

c) a comparison of the estimated funds spent to date to planned expenditures and an explanation of significant discrepancies per task.

The **quarterly** progress reports shall be due within 60 days of the reporting period; the final progress report is due 90 days after the expiration or termination of the cooperative agreement. The progress reports are to be submitted electronically to the EPA Project Officer via e-mail.

d. Reporting Periods: the reporting periods shall be defined according to the federal fiscal cycle.

Quarterly reports shall cover the periods:

October 1 - December 31

January 1 - March 31

April 1 - June 30

July 1 -- September 30

The first report shall cover the period from the start date of the award to the end of the first reporting cycle.

2. Inventory

a. CERCLA-funded property.

(1) Content. The report must contain the following information:

(a) Classification and value of remaining supplies.

(b) Description of all equipment purchased with CERCLA funds, including its current condition.

(c) Verification of the current use and continued need for the equipment by site, activity, and operable unit, as applicable.

(d) Notification of any property which has been stolen or vandalized.

(e) A request for disposition instructions for any equipment no longer

needed on the project.

(2) Reporting frequency. The recipient must submit an inventory report to EPA at the following times:

(a) Within 90 days after completing any CERCLA-funded project or any response activity at a site.

(b) When the equipment is no longer needed for any CERCLA-funded project or any response activity at a site.

b. Federally owned property.

(1) Content. The recipient must include the following information for each federally owned item in the inventory report:

(a) Description.

(b) Decal number.

(c) Current condition.

(d) Request for disposition instructions.

(2) Reporting frequency. The recipient must submit an inventory report to the appropriate EPA property accountable officer at the following times:

(a) Annually, due to EPA on the anniversary date of the award.

(b) When the property is no longer needed.

(c) Within 90 days after the end of the project period

G. Closeout

In addition to Agency requirements, closeout of a Cooperative Agreement, or an activity under a Cooperative Agreement, can take place in the following situations:

1. After the completion of all work for a response activity at a site.
2. After all activities under a Cooperative Agreement have been completed.
3. Upon termination of the Cooperative Agreement.

The recipient must comply with the closeout requirements described in 2 CFR § 200.343 and §200.344. After closeout, EPA may monitor the recipients' compliance required by CERCLA §104(c) and addressed in 40 CFR § 300.510(c)(1) of the NCP.

H. Third-Party Benefits

This Agreement is intended to benefit only the recipient and the EPA. It extends no benefit or rights to any part not a signatory to this Agreement. In addition, EPA does not assume any rights to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C.

Section 1346(b), 2671-2680. To the extent permitted by State law, the recipient does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

I. Records Management

1. Project records

The lead agency for the response action must compile and maintain an administrative record consistent with CERCLA § 113, the National Contingency Plan, and relevant EPA policy and guidance. In addition, recipients of assistance (whether lead or support agency) are responsible for maintaining project files described as follows. The recipient must maintain project records by site, activity, and operable unit, as applicable.

a. *Financial records.* The recipient must maintain records which support the following items: (1) Amount of funds received and expended; and (2) Direct and indirect project cost.

b. *Property records.* The recipient must maintain records which support the following items: (1) Description of the property; (2) Manufacturer's serial number, model number, or other identification number; (3) Source of the property, including the assistance identification number; (4) Information regarding whether the title is vested in the recipient or EPA; (5) Unit acquisition date and cost; (6) Percentage of EPA's interest; (7) Location, use and condition (by site, activity, and operable unit, as applicable) and the date this information was recorded; and (8) Ultimate disposition data, including the sales price or the method used to determine the price, or the method used to determine the value of EPA's interest for which the recipient compensates EPA in accordance with section G7.

c. *Procurement records.* (1) *General.* The recipient must maintain records which support the following items and must make them available to the public: (i) The reasons for rejecting any or all bids; and (ii) The justification for a procurement made on a noncompetitively negotiated basis. (2) *Procurements in excess of the simplified acquisition threshold.* The recipient's records and files for procurements in excess of the simplified acquisition threshold must include the following information: (i) The basis for contractor selection; (ii) A written justification for selecting the procurement method; (iii) A written justification for use of any specification which does not provide for maximum free and open competition; (iv) A written justification for the choice of contract type; and (v) The basis for award cost or price, including a copy of the cost or price analysis made in accordance with 40 CFR §35.6585 and documentation of negotiations.

d. *Other records.* The recipient must maintain records which support the following items: (1) Time and attendance records and supporting documentation; (2) Documentation of compliance with statutes and regulations that apply to the project.

2. Retention

a. This requirement applies to all financial and programmatic records, supporting documents, statistical records, and other records which are required to be maintained by the terms, program regulations, or the Cooperative Agreement, or are otherwise reasonably considered as pertinent to program regulations or the Cooperative Agreement.

b. *Length of retention period.* The recipient must maintain all records for 10 years following submission of the final Financial Status Report unless otherwise directed by the EPA award official and must obtain written approval from the EPA award official before destroying any records. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

c. *Substitution of an unalterable electronic format.* An unalterable electronic format, acceptable to EPA, may be substituted for the original records. The copying of any unalterable electronic format must be performed in accordance with the technical regulations concerning Federal Government records (36 CFR parts 1220 through 1234) and EPA records management requirements.

d. *Starting date of retention period.* The recipient must comply with the requirements regarding the starting dates for records retention described in 2 CFR §1500.6.

3. Access

a. The recipient must comply with the requirements regarding records access described in 2 CFR § 200.336.

b. *Availability of records.* The recipient must, with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, ensure that all files are available to the public.

c. *Contractor requirements.* The recipient must require its contractor to comply with the requirements regarding records access described in 2 CFR § 200.336.

J. Property Requirements

1. General Acquisition and Use Requirements

The recipient must acquire the property during the approved project period. The recipient must:

- a. Charge property costs by site, activity, and operable unit, as applicable.
- b. Document the use of the property by site, activity, and operable unit, as applicable

Solicit and follow EPA's instructions on the disposal of any property (see section J7)

2. Supplies and Equipment

The recipient must agree to comply with the requirements in the sections below.

3. Alternative Methods for Obtaining Property

a. Purchase equipment with recipient funds. The recipient may purchase equipment with the recipient's own funds and may charge EPA a fee for using equipment on a CERCLA-funded project. The fee must be based on a usage rate, subject to the usage rate requirements in Section J4 (40 CFR § 35.6320).

b. Borrow federally owned property. The recipient may borrow federally owned property, except for motor vehicles, for use on CERCLA-funded projects. The loan of the federally owned property may only extend through the project period. At the end of the project period, or when the federally owned property is no longer needed for the project, the recipient must return the property to the Federal Government.

c. Lease, use contractor services, or purchase with CERCLA funds.

To acquire equipment through lease, use of contractor services, or purchase with CERCLA funds, the recipient must conduct and document a cost comparison analysis to determine which of these methods of obtaining equipment is the most cost effective. To obtain the equipment, the recipient must submit documentation of the cost comparison analysis to EPA for approval. The recipient must obtain the equipment through the most cost-effective method, subject to the following requirements:

(1) Lease or rent equipment. If it is the most cost-effective method of acquisition, the recipient may lease or rent equipment, subject only to the requirements in J1. (40 CFR § 35.6300).

(2) Use contractor services.

(i) If it is the most cost-effective method of acquisition, the recipient may hire the services of a contractor.

(ii) The recipient must obtain award official approval before authorizing the contractor to purchase equipment with CERCLA funds. (See Section J5 regarding the title and vested interest of equipment purchased with CERCLA funds). This does not apply for recipients who have used the sealed bids method of procurement.

(iii) The recipient must require the contractor to allocate the cost of the contractor services by site, activity, and operable unit, as applicable.

(3) Purchase equipment with CERCLA funds. If equipment purchase is the most cost-effective method of obtaining the equipment, the recipient may purchase

the equipment with CERCLA funds. To purchase equipment with CERCLA funds, the recipient must comply with the following requirements:

(i) The recipient must include in the Cooperative Agreement application a list of all items of equipment to be purchased with CERCLA funds, with the price of each item.

(ii) If the equipment is to be used on sites, the recipient must allocate the cost of the equipment by site, activity, and operable unit, as applicable, by applying a usage rate subject to the usage rate requirements (see section J4).

(iii) The recipient may not use CERCLA funds to purchase a transportable or mobile treatment system.

4. Usage rate.

a. Usage rate approval. To charge EPA a fee for use of equipment purchased with recipient funds or to allocate the cost of equipment by site, activity, and operable unit, as applicable, the recipient must apply a usage rate. The recipient must submit documentation of the usage rate computation to EPA. The EPA-approved usage rate must be included in the Cooperative Agreement before the recipient incurs these equipment costs.

b. Usage rate application. The recipient must record the use of the equipment by site, activity, and operable unit, as applicable, and must apply the usage rate to calculate equipment charges by site, activity, and operable unit, as applicable.

5. Title and EPA interest in CERCLA-funded Property and Federally Owned Property

a. EPA's interest in CERCLA-funded property. EPA has an interest (the percentage of EPA's participation in the total award) in both equipment and supplies purchased with CERCLA funds.

b. Title in CERCLA-funded property. Title in both equipment and supplies purchased with CERCLA funds vests in the recipient.

c. Right to transfer title. EPA retains the right to transfer title of all property purchased with CERCLA funds to the Federal Government or a third party within 120 calendar days after project completion or at the time of disposal.

d. Equipment used as all or part of the remedy. The following requirements apply to equipment used as all or part of the remedy:

(1) Fixed in-place equipment. EPA no longer has an interest in fixed in-place equipment once the equipment is installed.

(2) Equipment that is an integral part of services to individuals. EPA no longer has an interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, once EPA certifies that the remedy is operational and

functional.

e. Title to all federally owned property vests in the Federal Government and when is no longer needed, the recipient must inform EPA that the property is available for return. EPA will send disposition instructions.

6. Property Management Standards

The recipient must comply with the following property management standards for property purchased with CERCLA funds. The recipient may use its own property management system if it meets the following standards.

- a. Property records for CERCLA-funded property which include the contents specified in Section I.1.b.
- b. A control system that ensures adequate safeguards for prevention of loss, damage, or theft of the property. The recipient must make provisions for the thorough investigation and documentation of any loss, damage, or theft.
- c. Procedures to ensure maintenance of the property are in good condition and periodic calibration of the instruments used for precision measurements.
- d. Sales procedures to ensure the highest possible return, if the recipient is authorized to sell the property
- e. Provisions for financial control and accounting in the financial management system of all equipment.
- f. Identification of all federally owned property.

7. Disposal of CERCLA funded property and Federally owned property

a. **Equipment:** For equipment that is no longer needed, or at the end of the project period, whichever is earlier, the recipient must:

(1) Analyze two alternatives: The cost of leaving the equipment in place, and the cost of removing the equipment and disposing of it in another manner.

(2) Document the analysis of the two alternatives in the inventory report. See section E2. regarding requirements for the inventory report. If it is most cost-effective to remove the equipment and dispose of it in another manner. If the equipment has a residual fair market value of \$5,000 or more, the recipient must request disposition instructions from EPA in the inventory report. If the equipment has a residual fair market value of less than \$5,000, the recipient may retain the equipment for the recipient's use on another CERCLA site. If, however, there is any remaining residual value at the time of final disposition, the recipient must reimburse the Hazardous Substance Superfund for EPA's vested interest in the current fair market value of the equipment at the time of disposition. If it is most cost-effective to leave the equipment in place, recommend in the inventory report that the equipment be left in place.

(3) Submit the inventory report to EPA, even if EPA has stopped supporting the project. (4) The following disposal options are available: (i) Use the equipment on another CERCLA project and reimburse the original project for the fair market value of the equipment; (ii) If both the recipient and EPA concur, keep the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment; (iii) Sell the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment, less any reasonable selling expenses; or (iv) Return the equipment to EPA and, if applicable, EPA will reimburse the recipient for the recipient's proportionate share in the current fair market value of the equipment.

b. **Supplies:** If supplies have an aggregate fair market value of \$5,000 or more at the end of the project period, the recipient must take one of the following actions at the direction of EPA:

(1) Use the supplies on another CERCLA project and reimburse the original project for the fair market value of the supplies.

(2) If both the recipient and EPA concur, keep the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies.

(3) Sell the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies, less any reasonable selling expenses. (d) If the supplies remaining at the end of the project period have an aggregate fair market value of less than \$5,000, the recipient may keep the supplies to use on another CERCLA project. If the recipient cannot use the supplies on another CERCLA project, then the recipient may keep or sell the supplies without reimbursing the Hazardous Substance Superfund.

c. When federally owned property is no longer needed, or at the end of the project, the recipient must inform EPA that the property is available for return to the Federal Government. EPA will send disposition instructions to the recipient.

8. Acquisition and Transfer of Real Property

A recipient may acquire an interest in real property only with prior approval of EPA.

a. If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the property must agree to hold the necessary property interest.

b. The recipient must comply with applicable Federal regulations for real property acquisition under assistance agreements contained in 40 CFR § 4 "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." c. The recipient must comply with the

requirements regarding real property described in 2 CFR § 200.311.

If EPA determines in the remedy selection process that EPA must acquire an interest in real property in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR §300.510(f) of the NCP. The State must provide this assurance even if it intends to transfer this interest to a third party, or to allow a political subdivision to accept transfer on behalf of the State. If the political subdivision is accepting the transferred interest in real property, the State must guarantee that it will accept transfer of such interest in the event of default by the political subdivision. If the State or political subdivision disposes of the transferred real property, it shall comply with the requirements for real property in 2 CFR § 200.311.

2. Operation and Maintenance

The recipient assures that it will assume responsibility for all future operation and maintenance of CERCLA-funded remedial actions for the expected life of each such action as required by CERCLA §104(c) and 40 CFR § 300.510(c)(1) of the NCP. In addition, if a political subdivision is designated as being responsible for operation and maintenance, the State must guarantee that it will assume any or all operation and maintenance activities in the event of default by the political subdivision.

3. Waste Capacity

The recipient recognizes EPA's expectation that there will be adequate national hazardous treatment and disposal capacity during the 20-year period following signature of this cooperative agreement pursuant to CERCLA §104(c)(9).

EPA's 2019 National Capacity Assessment shows that there is adequate national capacity for the treatment and disposal of hazardous waste through calendar year 2044. This assessment included data provided by the State for the 2017 National Biennial RCRA Hazardous Waste Report.

4. Out-of-state or out of an Indian tribe waste transfer

The state or tribe must provide written notification of off-site shipments of CERCLA waste from a site to an out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country waste management facility to: (1) The appropriate State environmental official for the State in which the waste management facility is located; and/or (2) An appropriate official of an Indian Tribe in whose area of Indian country the waste management facility is located; and (3) The EPA Award Official.

5. Off-site disposal

If off-site storage, destruction, treatment, or disposal is required, the State must assure the availability of a hazardous waste disposal facility that complies subtitle C of the Solid Waste Disposal Act and is acceptable to EPA. The lead agency of the State must provide the notification required at 40 CFR §35.6120, if applicable.

7. Operational and Functional

The completion of the joint State/EPA pre-final inspection marks the point in time when construction of each remedial action is considered complete for purposes of this Cooperative Agreement. It is used to document the beginning of the up to one-year O&F period. Consistent with 40 CFR 300.435(f)(2), the “remedy becomes operational and functional (O&F) either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and performing as designed, whichever is earlier.” The State will schedule and conduct a joint State/EPA final inspection within one year of the completion of the joint State/EPA pre-final inspection. The completion date of the State/EPA final inspection, assuming it is done within one year of the pre-final inspection, will be used as the date of the O&F determination. In the event that the joint State/EPA inspection does not occur within one year, the NCP (40 CFR § 300.435(f)) provides EPA the discretion to make an O&F determination without this inspection. As discussed in §300.435(f)(2) of the NCP, “EPA may grant extensions to the one-year O&F period, as appropriate.” When the O&F determination has been made, EPA will provide written notification to the State documenting the O&F determination. Since the O&F time period is part of the remedial action, the State cost share is applicable.

In accordance with 40 CFR §300.435(f)(1), the O&F determination results in the transfer of each remedial action to the State for O&M or initiation of the long-term response action (LTRA), as described in the Ground and Surface Water Restoration Provision.

The State and its contractor will prepare the Remedial Action Report once each remedial action is O&F. EPA will have the opportunity to comment on the Remedial Action Report. After EPA approves the Remedial Action Report, EPA will provide a copy to the State.

L. Procurement

1. The recipient shall comply with procurement standards described in 2 CFR § 200.317 through 200.326 and 2 CFR § 1500.
2. The recipient must require each prospective contractor to provide with its bid or proposal: Information on its financial and business relationship with all potentially responsible parties (PRPs) at the site and with the contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients at the site.

This disclosure requirement encompasses past financial and business relationships, including services related to any proposed or pending litigation, with such parties.

3. The recipient must require its contractor to comply with the requirements in D. regarding accounting standards, J4. regarding usage rate, J6. regarding property management standards, and I1-I2. regarding project records and retention.
4. Per 40 CFR § 35.6565, the recipient must obtain the award official's approval to use a procurement method other than the sealed bid method.
5. Use of the same engineer during subsequent phases of response: Per 40 CFR § 35.6570, if the public notice clearly stated the possibility that the firm or individual selected could be awarded a contract for follow-on services and initial procurement complied with the procurement requirements, the recipient of a CERCLA remedial Cooperative Agreement may use the engineer procured to conduct any or all of the follow-on engineering activities without going through the public notice and evaluation procedures. The recipient may also use the same engineer during subsequent phases of the project in the following cases:
 - a. Where the recipient conducted the remedial investigation (RI), feasibility study (FS), or design activities without EPA assistance but is using CERCLA funds for follow-on activities, the recipient may use the engineer for subsequent work provided the recipient certifies:
 - (1) That it complied with the procurement requirements in 40 CFR § 35.6565 when it selected the engineer and the code of conduct requirements described in 2 CFR 200.318(c)(1).
 - (2) That any CERCLA-funded contract between the engineer and the recipient meets all of the other provisions as described in the procurement requirements in this subpart.
 - (3) Where EPA conducted the RI, FS, or design activities but the recipient will assume the responsibility for subsequent phases of remedial action under this Cooperative Agreement, the recipient may use, with the award official's approval, EPA's engineer contractor without further public notice or evaluation provided the recipient follows the rest of the procurement requirements to award the contract

M. Competency Policy

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,

Recipient 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. Recipient agrees to demonstrate competency

prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient 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 <https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aaia-new.pdf> or a copy may also be requested by contacting the EPA Project Officer for this award.