



01-70-U-141498-0908  
9-1-08  
11-30-2011

\$200,000.-

9-1-2011  
11-30-2011

**BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date:

**ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

**APPROVAL OF THE BROWNFIELDS ASSESSMENT COOPERATIVE AGREEMENT BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND PIMA COUNTY, IN THE AMOUNT OF \$200,000.00, TO BE USED TO CONDUCT COMMUNITY WIDE ASSESMENTS AT POTENTIAL BROWNFIELDS SITES.**

TRACT NUMBER (If applicable):

FF RECOMMENDATION(S):

Approved by the Board of Supervisors.

REPORT HEADQUARTERS: \_\_\_\_\_

To: CoB - 11-5-08  
Agenda 11-18-08

Procure Dept 10/22/08 PM 04:58

This is an Official Copy of the Pima County contract executed and on file with Pima County.

CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: \$0 and/or REVENUE TO PIMA COUNTY: \$200,000.00

FUNDING SOURCE(S): Federal EPA Funds

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
--------------------------	-----	-------------------------------------	----

**Board of Supervisors District:**

1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5	<input type="checkbox"/>	All	<input checked="" type="checkbox"/>
---	--------------------------	---	--------------------------	---	--------------------------	---	--------------------------	---	--------------------------	-----	-------------------------------------

**IMPACT:**

**IF APPROVED:**

EPA grant funds, totaling \$200,000.00, will be utilized to inventory, characterize, assess, and conduct redevelopment planning and community involvement activities related to potential brownfields sites in Pima County.

**IF DENIED:**

EPA grant funds, totaling \$200,000.00, will **not** be utilized to inventory, characterize, assess, and conduct redevelopment planning and community involvement activities related to potential brownfields sites in Pima County.

DEPARTMENT NAME: Community Development and Neighborhood Conservation Dept.

CONTACT PERSON: Daniel Tylutki TELEPHONE NO.: 243-6695 or 740-6894

This is an Official Copy of the Pima County contract executed and on file with Pima County.

# RETURN TO EPA, MTS-7

BF - 96945001 - 0 Page 1



## U.S. ENVIRONMENTAL PROTECTION AGENCY

### ASSISTANCE ID NO.

PRG	DOC ID	AMEND#	DATE OF AWARD
BF -	96945001	- 0	09/11/2008
TYPE OF ACTION			MAILING DATE
New			09/18/2008
PAYMENT METHOD:			ACH#
Advance			

### Cooperative Agreement

#### CONTRACT

NO. 01704-14/498-0908

**AMENDMENT NO.**  
This number must appear on all invoices, correspondence and documents.

RECIPIENT TYPE: County	Send Payment Request to: Las Vegas Finance Center, Fax (702) 798-2423	EPA PROJECT OFFICER
RECIPIENT: Pima County 2797 East Ajo Way Tucson, AZ 85713 EIN: 86-6000543	PAYEE: Pima County 2797 East Ajo Way Tucson, AZ 85713	EPA GRANT SPECIALIST
PROJECT MANAGER Daniel Tylutki 2797 East Ajo Way Tucson, AZ 85713 E-Mail: daniel.tylutki@pima.gov Phone: 520-243-6695	Wallace-Woo 75 Hawthorne Street, SFD-1 San Francisco, CA 94105 E-Mail: Woo.Wallace@epa.gov Phone: 415-972-3270	Fareed Ali Grants Management Office, MTS-7 E-Mail: Ali.Fareed@epa.gov Phone: 415-972-3665

**PROJECT TITLE AND DESCRIPTION**  
Brownfields Assessment Cooperative Agreement

This cooperative agreement will be used to conduct community wide assessments at potential Brownfields sites contaminated with Hazardous Substances. The grant recipient will conduct site prioritization, then Phase I and Phase II Assessments at selected sites. Funds will also be used for public outreach and community involvement/public participation.

This assistance agreement provides full federal funding in the amount of \$200,000. Pre-award cost approved back to 9/1/2008.

BUDGET PERIOD 09/01/2008 - 11/30/2011	PROJECT PERIOD 09/01/2008 - 11/30/2011	TOTAL BUDGET PERIOD COST \$200,000.00	TOTAL PROJECT PERIOD COST \$200,000.00
--	---	--	---

## NOTICE OF AWARD

Based on your application dated 06/02/2008, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$200,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$200,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

<b>SUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>	<b>AWARD APPROVAL OFFICE</b>
<b>LOCATION / ADDRESS</b> Region 9 Grants Management Office, MTS-7 75 Hawthorne Street San Francisco, CA 94105	<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Superfund Division, SFD-1 75 Hawthorne Street San Francisco, CA 94105

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

OFFICIAL NAME AND TITLE Signature applied by EPA Award Official	TYPED NAME AND TITLE Jane Diamond, Assistant Regional Administrator	DATE 09/11/2008
--	--	--------------------

### AFFIRMATION OF AWARD

#### BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

OFFICIAL NAME AND TITLE  Margaret Kish, Department Director	TYPED NAME AND TITLE Margaret Kish, Department Director	DATE 10/27/08
---	--	------------------

NOV 18 2008 Date  
Clerk of the Board NOV 18 2008 Date

**AS TO FORM:**

10-23-08 Date  
County Attorney

This is an Official Copy of the Pima County contract executed and on file with Pima County.

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 200,000	\$ 200,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 200,000	\$ 200,000

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

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	0809K8B031	08	E4	09K0AG7	402D79E	4114	G900ON00		200,000
									200,000

This is an Official Copy of the Pima County contract executed and on file with Pima County.

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	\$12,000
4. Equipment	\$0
5. Supplies	\$6,000
6. Contractual	\$182,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$200,000
12. Total Approved Assistance Amount	\$200,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$200,000
15. Total EPA Amount Awarded To Date	\$200,000

This is an Official Copy of the Pima County contract executed and on file with Pima County.

## Administrative Conditions

ADMINISTRATIVE CONDITIONS #1-14. FOR PROGRAMMATIC CONDITIONS PLEASE REFER TO "ATTACHMENT A".

1. An interim Financial Status Report (FSR), Standard Form 269A (Rev. 7/97), covering the period from "project/budget period start date" to September 30 of each calendar year shall be submitted to the Grants Management Office, MTS-7, no later than December 31 of the same calendar year. The initial FSR is due December 31, 2009.

The final FSR covering the entire project period shall be submitted to the U.S. EPA Las Vegas Finance Center, PO Box 98515, Las Vegas, NV 89193-8515, within 90 days after the end of the project period according to the recipient's respective Code of Federal Regulations Part 30.52(a)(1)(iv) and 30.71(a), or Part 31.23(b) and 31.41(b) (as applicable). The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

2. The recipient will provide timely reporting of cash disbursements and balances through annual submission (January - December) of a Federal Cash Transactions Report (SF272 and SF272A). The appropriate reports must be submitted to the Las Vegas Finance Center within 15 working days following the end of each calendar year. The recipient may access these forms and the instructions for submission at <http://www.epa.gov/ocfo/finservices/payinfo.htm>.

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

Federal Audit Clearinghouse  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

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

<http://harvester.census.gov/fac/>.

4. The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements as set forth in 40 CFR Part 33. The EPA DBE rule can be accessed at <http://www.epa.gov/osbp>. In addition, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply with 40 CFR Section 33.301. Records documenting compliance with the six good faith efforts shall be retained.

The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the Arizona Department of Environmental Quality as follows:

MBE

WBE

Construction	15%	7%
Equipment	14%	20%
Services	15%	32%
Supplies	15%	31%

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

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

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study to Joe Ochab, MTS-1, the Regional MBE/WBE Coordinator, within 120 days of acceptance of the financial assistance award. EPA will respond to the proposed fair share objectives/goals within 30 days of receiving the submission. If proposed fair share objectives/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objectives/goals are submitted.

A recipient of a Continuing Environmental Program Grant or other annual grant agrees to create and maintain a bidders list. A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also agrees 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. Refer to 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

5. The recipient agrees to complete and submit to the Grants Management Office, MTS-7, a MBE/WBE Utilization Report (EPA Form 5700-20A), within 30 days after the end of the Federal fiscal year; i.e., by October 30 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards a recipient's MBE/WBE accomplishments. A final MBE/WBE report must be submitted within 90 days after the end of the project period. Your grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

6. When procuring services, equipment, and/or supplies under this assistance agreement, the recipient will follow the same policies and procedures it uses for procurements from its non-Federal funds. The recipient will follow their own procurement policies and procedures provided that the policies and procedures conform with EPA regulations 40 CFR Part 31.36 or 30.44 (as applicable) which state that all procurement transactions will be conducted in a manner providing full and open competition.

7. Payment to consultants. Per 40 CFR Part 31.36(j), EPA's participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. As of

This is an Official Copy of the Pima County contract executed and on file with Pima County.

January 1, 2008, the rate is \$571.12 per day and \$71.39 per hour. This rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms or individuals for services which are awarded using the procurement requirements in 40 CFR Parts 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR Part 31.36(j)(2) or Part 30.27(b).

8. The cost principles of 2 CFR 225, 230, or 220 (formerly OMB Circular A-87, A-122, or A-21) are applicable to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

9. The recipient shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective 2 CFR 220, 225, or 230 (formerly OMB Circular A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

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

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

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

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

12. The recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

13. The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient

This is an Official Copy of the Pima County contract executed and on file with Pima County.

organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

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

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

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

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

### **Programmatic Conditions**

SEE "ATTACHMENT A" FOR ADDITIONAL TERMS AND CONDITIONS

This is an Official Copy of the Pima County contract executed and on file with Pima County.

**ATTACHMENT A**  
**Redevelopment Agency of the Pima County, AZ**  
**Community-Wide Assessment**

**Brownfields Assessment Grant Terms and Conditions**

**I. GENERAL FEDERAL REQUIREMENTS**

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

**A. Federal Policy and Guidance**

1. a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall insure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.
- b. CERCLA 104(g) requires that recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts “funded in whole or in part” with funds provided under this agreement. If the CAR uses funds awarded under this agreement to contract for construction, repair or alteration work, it must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
- c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open

This is an Official Copy of the Pima County contract executed and on file with Pima County.

Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

- d. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

**B. Eligible Brownfields Site Determinations**

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.
  - b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.  
**The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.**
2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):
    - (1) that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,

This is an Official Copy of the Pima County contract executed and on file with Pima County.

(3) that the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and  
(4) that the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

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

- b. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
- c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

## II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of this agreement is **three years** from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after **1½ years** from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the Agency may terminate this agreement.
3. Assessment funding for any eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA and then funding is not to exceed \$350,000 at the site subject to the waiver.

This is an Official Copy of the Pima County contract executed and on file with Pima County.

## B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under §107 of CERCLA.
  - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

Effect of EPA's substantial involvement includes:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
- b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
- c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

## . Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition. Prior to awarding a subgrant the CAR shall consult with the EPA Project Officer.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.
5. For site specific BF assessment Cooperative Agreements; the CAR may only use the grants funds for the site identified for this Cooperative Agreements.

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

#### **D. Quarterly Progress Reports**

1. The CAR must submit progress reports on a quarterly basis (no later than 30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - a. Documentation of progress at meeting performance outcomes/outputs, project narrative, project time line and an explanation for any slippage in meeting established output/outcomes.
  - b. An update on project milestones.

- c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
  - d. If applicable, quarterly reports must specify costs incurred at petroleum contaminated brownfields sites.
  - e. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where assessment activities were completed.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific sites under this grant.
  3. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA approved work plan.
  4. The CAR must complete and submit relevant portions of the Property Profile Form reporting the commencement of a Phase I assessment, or the completion of a property assessment. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on-line reporting system, the Assessment, Cleanup and Redevelopment Exchange System (ACRES), by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on-line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>

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

The CAR will electronically submit Quarterly Reports and Property Profile Forms to the project officer's email address with a copy of the submittal directed to [bf\\_forms@epa.gov](mailto:bf_forms@epa.gov).

### III. FINANCIAL ADMINISTRATION REQUIREMENTS

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

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

expenses may include:

- a. Determining whether assessment activities at a particular site are authorized by CERCLA 104(k);
  - b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section B.
  - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA (e.g., quarterly reports and final performance reports); procuring and managing contracts; awarding and managing subgrants to the extent allowable under II. C. 3.; and carrying out community involvement pertaining to the assessment activities.
2. Local Governments only. No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the specific Task of the EPA approved workplan. The CAR must maintain records on funds that will be used to carry out this task).

**B. 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. Cleanup activities;
  - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
  - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
  - d. To pay for a penalty or fine;
  - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;

This is an Official Copy of the Pima County contract executed and on file with Pima County.

- f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;
  - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
  - h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement. Also, costs incurred outside the authorized funding periods to comply with the required Final Performance Report are ineligible.
  - b. Ineligible grant administration costs include direct costs for:
    - (1) Preparation of applications for Brownfields grants;
    - (2) Record retention required under 40 CFR 31.42;
    - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
    - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
    - (5) Maintaining and operating financial management systems required under 40 CFR 31;
    - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
    - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133;

This is an Official Copy of the Pima County contract executed and on file with Pima County.

and

(8) Close out under 40 CFR 31.50; except for costs incurred, within the authorized funding, relating to the Final Performance Report (see III A.1.d. above).

3. Cooperative agreement funds may 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, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

#### **C. Interest -Bearing Accounts and Program Income**

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
2. The CAR must deposit advances of grant funds and program income (e.g., fees) in an interest bearing account.
  - a. Interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
  - b. Interest earned on program income is considered additional program income.

#### **IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS**

### A. Authorized Assessment Activities

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

### B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
2. The CAR should comply with the following QA requirements:
  - a. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.
  - b. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption and the recipient contacts the Quality Assurance Manager to obtain approval prior to beginning the sampling work. Contact the QA Office at 415-972-3411. In the event an unforeseen site condition arises during the cleanup work, changes or deviations to the type of contaminant sampled, methodology, or sample spacing, the recipient

This is an Official Copy of the Pima County contract executed and on file with Pima County.

must contact the Quality Assurance Manager to determine if the Sampling and Analysis Plan must be amended before new work is initiated. If the change is such that a site hazard is created by a delay in the work, the recipient shall contact the Quality Assurance Manager to obtain approval prior to formally revising the document. Minor field deviations (i.e: slight location changes) should be noted in the final cleanup report, but do not require EPA approval.

- c. Under the Assessment program, area-wide projects or multi-site projects will require the preparation of a Quality Assurance Project Plan (QAPP) in addition to site specific Sampling and Analysis Plans.
- d. Under the Assessment, Cleanup, and Revolving Loan Fund programs, a one-site project may use the one-site Region 9 Sampling and Analysis Plan which incorporates the QAPP.
- e. Under the Revolving Loan Fund program, the CAR is responsible for preparing the QAPP for the program. In turn, the individual borrowers or sub-grantees are responsible for preparing the site specific Sampling and Analysis Plan in accordance with Region 9's current QA guidance. The borrowers or sub-grantees must contact the Quality Assurance Manager to obtain the current QA guidance for each site.
- f. If the review and approval of the QAPP was completed five years ago, it must be resubmitted to EPA for review and approval to ensure it remains a useful and valid document for the site.
- g. In general, a QAPP or Sampling and Analysis Plan will require approximately two to four weeks for the EPA Quality Assurance Manager to review and return comments. Documents generally require one revision and re-submittal. The re-submittal review time is typically two weeks.

### **C. Community Relations and Public Involvement in Assessment Activities**

1. Some assessment activities may require a site-specific community relations plan. Those activities include assessment work performed beginning with the Phase II environmental assessment through to the development of a remediation/cleanup plan. It should address providing reasonable notice of site work, opportunity for public involvement, response to comments, decisions for site work, and an administrative record being made available to the public. The CAR should consult with the EPA Project Officer on the project's community relations plan. The plan should be made available upon request.

### **D. Implementation and Completion of Assessment Activities**

This is an Official Copy of the Pima County contract executed and on file with Pima County.

1. For those assessment projects where a community-wide inventory precedes any site assessments, if proposed sites have not been previously identified in the approved work plan for an ASTM Phase I or Phase II environmental assessment, the EPA project officer must be consulted to approve further selected sites before assessment work is implemented.

#### **E. All Appropriate Inquiry**

1. As required by CERCLA §104(k)(2)(B)(ii) and CERCLA §101(35)(B), the CAR shall ensure that a "Phase I" site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule. This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

#### **V. CONFLICT OF INTEREST: APPEARANCE OF LACK OF IMPARTIALITY**

##### **a. Conflict of Interest**

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

- (i) The affected party,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above,
- has a financial or other interest in the subgrant recipient.

This is an Official Copy of the Pima County contract executed and on file with Pima County.

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

## VI. PAYMENT AND CLOSEOUT

### A. Payment Schedule

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

### B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50.

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING THE BROWNFIELDS ASSESSMENT COOPERATIVE AGREEMENT BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND PIMA COUNTY TO ADMINISTER A COMMUNITY-WIDE ASSESSMENT GRANT IN THE AMOUNT OF \$200,000.00.**

**WHEREAS**, Pima County Board of Supervisors passed and adopted Resolution No. 2007-252 authorizing the submittal of applications for U.S. Environmental Protection Agency (EPA) community-wide assessment grant funding for the promotion of sustainable practices such as community brownfield redevelopment activities that will promote effective infill development in stressed and urban areas; and

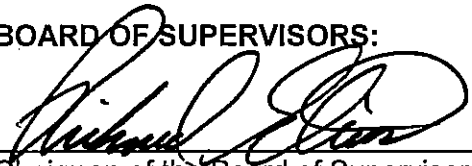
**WHEREAS**, the EPA has awarded \$200,000.00 to Pima County to administer a Brownfields Assessment Program to inventory, characterize, assess, and conduct redevelopment planning and community involvement activities related to potential brownfields sites in Pima County;

**NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:**

1. The Brownfields Assessment Cooperative Agreement with the U.S. Environmental Protection Agency (ID No. BF-96945001-0) is hereby approved.
2. The Chairman of the Board is hereby authorized and directed to sign the above Agreement for the Pima County Board of Supervisors.
3. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution and the Agreement and to carry out the terms of the grant.

**PASSED, ADOPTED AND APPROVED** this 18th day of November, 2008 by the Board of Supervisors of Pima County.

**BOARD OF SUPERVISORS:**


  
Chairman of the Board of Supervisors

11/18/08

**ATTEST:**

  
Lori Godoshian, Clerk of the Board

**APPROVED AS TO FORM:**

  
Deputy County Attorney  
**REGINA NASSEN**

This is an Official Copy of the Pima County contract executed and on file with Pima County.