

BROWNFIELDS ASSESSMENT COALITION
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FLAGSTAFF
AND THE CITY OF HOLBROOK

This Agreement (“Agreement”) is entered into this _____ day of _____, 2012, by and between the City of Flagstaff (“City”), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and the City of Holbrook (“Coalition Member”), 465 1st Avenue, Holbrook, Arizona. The City and Coalition Member may also be referred to as “Party” or “Parties” in this Agreement.

The City of Flagstaff is the Lead Coalition Member/Grantee/Fiscal Agent. Other members of the Assessment Coalition (“Coalition”) include the City of Winslow, the City of Holbrook, Coconino County, and Navajo County. This Intergovernmental Agreement (“IGA”) documents the roles and responsibilities of the City of Flagstaff and the City of Holbrook with regard to Environmental Protection Agency (“EPA”) Cooperative Agreement No: BF 00T97401. Separate IGAs will document the roles and responsibilities of the other Assessment Coalition members (“Coalition Members”).

1. On September 14, 2012, the EPA awarded the Cooperative Agreement to the Lead Coalition Member/Grantee/Fiscal Agent, the City of Flagstaff. The grant period is October 1, 2012, through October 31, 2015. The City of Flagstaff is responsible to the EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all members of the coalition are in compliance with the terms and conditions.
2. It is the responsibility of the City of Flagstaff to provide timely information to the Coalition Member regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.
3. The contact information for the City of Flagstaff is as follows:

City of Flagstaff	City of Flagstaff
Karl Eberhard (Principal Investigator)	Stacey Brechler-Knaggs (Administrative Contact)
Community Design and Redevelopment Manager	Grants Manager
211 West Aspen	211 West Aspen
Flagstaff, Arizona 86001	Flagstaff, Arizona 86001
(928) 213-2969	(928) 213-2227
keberhard@flagstaffaz.gov	sknaggs@flagstaffaz.gov

The contact information for the other Coalition Members is as follows:

Coconino County
Randy Phillips
2500 N. Fort Valley Road, Building 1
Flagstaff, AZ 86001
(928) 679-8758
rphillips@coconino.az.gov

City of Winslow
Ahmed Abdullah
21 Williamson Avenue
Winslow, Arizona 86047
(928) 289-3204
ahmed.abdullah@ci.winslow.az.us

Navajo County
Trent Larson
P.O. Box 668
Holbrook, Arizona 86025
(928) 524-4271
tiffany.ashworth@navajocountyaz.gov

City of Holbrook
Cher Reyes
465 1st Avenue
Holbrook, Arizona 86025
(928) 524-6225 x 30
cher@ci.holbrook.az.us

4. Activities funded through the Cooperative Agreement may include, but are not limited to, inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, outreach materials and implementation, and other eligible activities. The Coalition Member will retain and manage its own consultants and contractors under 40 CFR 30.36 to undertake various activities funded through the Cooperative Agreement.
5. The Coalition Member will procure consultants and contractors in compliance with 40 CFR 31.36 requirements. The Coalition Member will issue Requests for Proposals or Requests for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection and award of contracts. The City of Flagstaff will cooperate with the Coalition Member in making selections of consultants and contractors and negotiating the terms of agreements. Consultant and contractor invoices for work conducted through the Cooperative Agreement will be issued to the City of Flagstaff for approval. Funds will be provided to the City of Flagstaff from the EPA via wire-transfer and the City of Flagstaff will pay invoices through established accounts payable mechanisms.
6. A portion of the grant funds will be retained by the City of Flagstaff from the initial grant amount to cover management and oversight of the contract for the duration of the contract term. The remainder of the funds will be available to any Coalition Member, including the City of Flagstaff, on a “first-come-first-served” basis, limited as follows:

A Coalition Member seeking funds during the course of the grant period will be required to submit an application to the Assessment Coalition describing the project, necessary tasks, estimated costs, and other pertinent information. The Coalition will meet monthly (or more often, if needed) to review applications and approve or deny funding by a simple majority vote. Quorum is defined as attending parties, regardless of other factors. The City of Flagstaff will have authority to delay and bring back to the Coalition any application that does not, or cannot, meet the terms of the grant requirements. In the case of unresolvable disagreement, the City of Flagstaff has ultimate authority (as fiscal agent/grant management). No single community will receive more than twenty-five percent (25%) of the total available funds without a super majority vote of Coalition Members with the City of Flagstaff having the deciding vote (if necessary). The site selection process must ensure that a minimum of five (5)

sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to the EPA for prior approval to ensure eligibility. (Note: The City of Flagstaff and each of the Coalition Members may agree upon a minimum number of sites assessed per member at the start of the Cooperative Agreement to ensure equitable distribution of funds across all members' jurisdictions.) The City of Flagstaff shall develop procedures for implementing the requirements of this Section 6.

7. Upon designation of the specific sites, it will be the responsibility of the City of Flagstaff to work with the Coalition Member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of the Coalition Member to obtain all required permits, easements, and/or access agreements, as may be necessary, to undertake assessments at the selected site. If the Coalition Member does not have the capacity to perform these activities, the City of Flagstaff may assist in securing necessary site access agreements and permits.
8. A Work Plan (Exhibit A) has been prepared and submitted to the EPA as required by the Application for Grant Award. The work plan contains the specific details relating to community outreach and involvement, Coalition Member compliance, site selection, distribution of funds, schedule, etc. The City of Flagstaff is responsible for ensuring that activities as negotiated in the Work Plan are implemented in accordance with a schedule agreed upon by the Coalition Member in whose geographic area the site to be assessed is located.
9. **Disbursements to Coalition Member.** The City will disburse funds to the Coalition Member on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate, and complete reimbursement documents, as deemed necessary by the City, to be submitted by the Coalition Member. Payments will be contingent upon receipt of all reporting requirements of the Coalition Member under this Agreement.
10. **Fiscal Responsibility.** The funds disbursed by the City under this Agreement shall be used only for the project as described in the City's grant application, grant agreement, and in the Work Plan. Any modification to quantity or scope of work must be approved in writing by the City. If any expenditure by the Coalition Member under this Agreement is disallowed by an audit exemption or by the City or the State, the Coalition Member shall reimburse funds for the disallowed expenditure directly to the City immediately upon demand by the City. The Coalition Member shall also abide by the General Provisions in the Grant Agreement between the Environmental Protection Agency and the City of Flagstaff, Grant No. BF 00T97401, a copy of which is attached as Exhibit B and incorporated into this Agreement by reference. The Coalition Member is required to comply with all provisions of Exhibit B and shall be accountable to the City for the use of federal funds provided under this IGA.
11. **Financial Audit: Programmatic Monitoring.** The Coalition Member agrees to the terms specified in A.R.S. § 35-214 and § 35-215.

During the term of this Agreement, the Coalition Member must have an annual audit conducted in accordance with OMB Circular A-133 ("Audits of States, Local Governments, and Non-profit Organizations"), if the Coalition Member expends more than five hundred thousand dollars (\$500,000) from Federal awards, in compliance with the

Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156). If the Coalition Member has expended more than five hundred thousand dollars (\$500,000) in Federal funds, a copy of the Coalition Member's audit report for the previous fiscal year must be submitted to the City for review within thirty (30) days of signing this Agreement.

During the term of this Agreement, the Coalition Member shall be monitored periodically by the City of Flagstaff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria, are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance, and administrative issues relative to each program, and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the City and the Coalition Member.

12. **Debarment Certification.** The Coalition Member agrees to comply with the Federal debarment and suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."
13. **Funds Management.** The Coalition Member must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The Coalition Member must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits. Coalition Members must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).
14. **Reporting Requirements.** Regular reports by the Coalition Member shall include:
 - 14.1. **Progress Reports.** The Coalition Member shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The Coalition Member shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 14, the City shall not request, and Coalition Member shall not be required to provide, any of Coalition Member's confidential or proprietary information in reports provided to the City, including, without

limitation, any information regarding research collaborators, research plans, or any data, results or other information resulting from Coalition Member's performance of research or any other activities relating thereto.

14.2. Financial Reimbursements. The Coalition Member shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by City staff. The Coalition Member shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked "FINAL." All reports shall be submitted to the contact person as described in Section 37, Notices, of this Agreement.

15. **Assignment and Delegation.** The Coalition Member may not assign any rights under this Agreement without the express, prior written consent of the City.
16. **Amendments.** Any change in this Agreement including but not limited to the Description of Services and budget, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of the Coalition Member and the City. Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the Coalition Member's compensation, if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. The Coalition Member understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.
17. **Agreement Renewal.** This Agreement shall not bind nor purport to bind the City for any contractual commitment in excess of the original Agreement period.
18. **Right to Assurance.** If the City in good faith has reason to believe that the Coalition Member does not intend to, or is unable to perform or continue performing under this Agreement, the City may demand in writing that the Coalition Member give a written assurance of intent to perform. If the Coalition Member fails to provide written assurance within the number of days specified in the demand, the City, at its option, may terminate this Agreement.
19. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is an employee or agent of the other party in any capacity or a consultant to the other party to the Agreement with respect to the subject matter of the Agreement, this Agreement may be canceled for conflict of interest.
20. **Availability of Funds.** Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this

Agreement, the City may terminate this Agreement at the end of the period for which funds are available. The City will provide thirty (30) days written notice and shall pay the Coalition Member for termination costs as allowable under Cost Principles (OMB Circular A-122).

21. **Force Majeure.** If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.
22. **Partial Invalidity.** Any term or provision of this Agreement that may be declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.
23. **Mediation and Venue**
 - 23.1. **Mediation.** If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within forty-five (45) days of notification of the dispute, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted in Flagstaff, Arizona, under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, unless other procedures are agreed upon by the parties. The parties shall select one or more trained mediators acceptable to all parties. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Agreement does not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona or Federal Rules of Civil Procedure.
 - 23.2. **Venue.** For purposes of any form of dispute resolution, venue shall be in Coconino County, State of Arizona, or in the District of Arizona, if litigation under diversity jurisdiction is involved.
24. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.
25. **Entire Agreement.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document. This Agreement and its Exhibits constitute the entire agreement between the parties and may not be changed or added to except in writing signed by the parties, provided, however, that the City shall have the right to immediately amend this Agreement so that it complies with any new

legislation, laws, ordinances, or rules affecting this Agreement. The Coalition Member agrees to execute any such amendment within ten (10) business days of its receipt.

26. **Non Waiver.** Neither party's failure to insist on strict performance of any term or condition of the Agreement shall be deemed a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.
27. **Restrictions on Lobbying.** The Coalition Member shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of any governmental entity.
28. **Licensing.** The Coalition Member, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.
29. **Non-Discrimination.** The Coalition Member shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. Title 41, Chapter 9, Article 4 and Executive Order 2009-09.
30. **Sectarian Requests.** Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction, in violation of the United States or Arizona Constitutions.
31. **Advertising and Promotion of Agreement.** The Coalition Member shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the City.
32. **Ownership of Information, Printed and Published Material.** The Funding Agency and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all reports provided to the City under this Agreement in accordance with Section 14 above.
33. **Indemnification.** To the extent permitted by law, each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees, (collectively referred to as "Claims") arising out of bodily injury of any person, including death, or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents or employees.
34. **Termination.** Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The staff of either

party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

If the Coalition Member chooses to terminate the Agreement before the grant purposes have been met, then the City reserves the right to collect all reimbursements distributed to the Coalition Member that have not been spent, and the Coalition Member is not contractually obligated to pay to any third party as of the date Coalition Member receives notice of said termination.

The Coalition Member shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

- 35. **Paragraph Headings.** The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.
- 36. **Special Conditions.** The Coalition Member agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "**Purchased with funds provided by the Environmental Protection Agency, 2012 Brownfield Assessment Grant.**"

The Coalition Member agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

- 37. **Notices.** Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement, shall be in writing and delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

To Coalition Member:

The City of Holbrook
21 Williamson Avenue
Winslow, Arizona 86047

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

The City of Flagstaff, Lead Coalition Member

Date _____

The City of Holbrook, Coalition Member

Date_____

Attest:

City Clerk

Approved as to form:

City Attorney