



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: September 6, 2022

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

United States Air Force

***Project Title/Description:**

Encroachment Management Agreement between Pima County, Arizona and United States of America-Concerning Installation Encroachment Management Plan in the vicinity of Davis Monthan Air Force Base, Tucson, Arizona.

***Purpose:**

In keeping with Pima County's Economic Development Plan and long-standing support of Davis-Monthan Air Force Base (DMAFB), Pima County partnered with DMAFB in 2017 and entered into an EMA with the U.S. Air Force in benefit of Davis-Monthan Air Force Base (DMAFB) for encroachment prevention under the REPI program. In partnership with Pima County, DM was able to apply for REPI federal funds for up to 5 years under the 2017 EMA, with the County authorized to acquire property interests on behalf of DMAFB within the Approach/Departure Corridor (ADC) based on incompatible land uses, for purposes of reducing the impact of urban encroachment on Base operations and future mission growth using Federal funds. This is a willing seller program only. The new EMA extends the program for an additional 5 years to allow DM and the County to expend additional and remaining Federal funds.

***Procurement Method:**

Exempt per Section 11.04.020

***Program Goals/Predicted Outcomes:**

Through this agreement, the County will continue to acquire eligible property interests in the ADC on behalf of DMAFB that have been identified as having incompatible land uses that can impact Base operations and training. This program assists in mitigating and removing these encroachment threats.

***Public Benefit:**

DMAFB is one of the largest major employers in Pima County and contributes \$1 billion annually to our local economy. This new EMA extends the partnership between Pima County and DMAFB to further efforts in protecting the Base from encroachment that can impact operations, training and future mission growth. Preventing and mitigating encroachment, a significant threat to military installations, is critical in protecting the Base.

***Metrics Available to Measure Performance:**

Acquisitions of eligible property interests will be made until Federal funds are expended. Additionally, once this EMA has been executed by the Pima County Board of Supervisors, it will then be sent to the United States Air Force for final execution.

***Retroactive:**

No

TO: COB 8-24-22 (1)
Vers. 1.1
pgs. 1-33

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CTN Department Code: RPS Contract Number (i.e., 15-123): 23*0033
 Commencement Date: 9/6/2022 Termination Date: 9/5/2027 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount \$ _____ * ☒ Revenue Amount: \$ 0.00

***Funding Source(s) required:** _____

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? Yes

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
 Amendment No.: _____ AMS Version No.: _____
 Commencement Date: _____ New Termination Date: _____
 Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☒ No If Yes \$ _____

***Funding Source(s) required:** _____

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☒ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
 Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:** _____

***Match funding from General Fund?** ☐ Yes ☒ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☒ No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Jeff Teplitsky

Department: Real Property Services

Telephone: 724-6306

Department Director Signature: _____

Date: 9/23/2022

Deputy County Administrator Signature: _____

Date: 8/23/2022

County Administrator Signature: _____

Date: 8/23/2022

ENCROACHMENT MANAGEMENT AGREEMENT

BETWEEN

PIMA COUNTY, ARIZONA

AND

UNITED STATES OF AMERICA

CONCERNING

Installation Encroachment Management Plan in the vicinity of Davis Monthan Air Force Base,
Tucson, Arizona

Authority: 10 U.S.C § 2684a

In accordance with 10 USC 2684a, this Encroachment Management Agreement, including all attachments herein, hereinafter the “Agreement”, is entered into between the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF THE AIR FORCE** or his or her authorized delegate, hereinafter called the “**Air Force**”, and Pima County, a political subdivision, of the State of Arizona, hereinafter called the “**Eligible Entity**”. The Air Force and the Eligible Entity are sometimes collectively referred to herein as the “**Parties**” and individually as the “**Party**”.

RECITALS:

A. The Parties entered into that certain Encroachment Management Agreement between the United States and the Eligible Entity, dated 21 July 2017 (the “Agreement”) which was amended on 28 September 2018 (the “First Amendment”), 24 June 2019 (the “Second Amendment”), 28 April 2020 (the “Third Amendment”); 22 September 2021 (the “Fourth Amendment”) etc; (collectively, “Amendments”). and

B. The Parties desire to replace the Encroachment Management Agreement with this Agreement and ensure any obligated funds pursuant to such Agreements [and Amendments] remain unexpired until the end of the fifth (5th) fiscal year in which they were obligated under the Encroachment Management Agreement and the Amendments.

NOW THEREFORE, the Parties agree as follows:

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ATTACHMENTS

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ARTICLE 1 - AUTHORITY

This Agreement is executed under authority of 10 U.S.C. § 2684a. If any term, or interpretation of a term, conflicts with 10 U.S.C. § 2684a, as amended, or other statutes applicable to this Agreement, the statutory requirements prevail as provided under Article 2, and the term or its interpretation is unenforceable. Thus, it is incumbent upon both Parties to understand and comply with such laws in performance and execution of this Agreement.

ARTICLE 2 – ORDER OF PRECEDENCE

2.1. This Agreement is subject to the laws and regulations of the United States. Any inconsistency or conflict in the terms and conditions specified in this Agreement shall be resolved according to the following order of precedence:

2.1.1. The federal statutes authorizing this payment or any other federal statutes directly affecting performance of this Agreement, particularly, 10 U.S.C. § 2684a.

2.1.2. In case of disagreement with any terms or conditions under this Agreement, the Eligible Entity shall contact the Project Manager (as defined in Section 3.25) in order to resolve the issue. The Eligible Entity shall not proceed with any acquisitions or accept any payments until the issue is resolved.

ARTICLE 3 – GENERAL DEFINITIONS

3.1. Acquisition Costs: The total cost of the Real Property Interest(s) acquired, including the agreed sales price, including a down payment/deposit but only if creditable to the sales price, and Allowable Transaction Costs as defined herein. It does not include any lump sum payments that may be authorized to be paid for Natural Resources Management, Monitoring, and Enforcement cost(s), as that term is defined herein, or general easement monitoring and management.

3.2. Air Force: The Air Force is a branch of the armed services, as defined in 10 U.S.C. § 9011, authorized to receive and obligate appropriated funds under 10 U.S.C. § 2684a, as amended. The Air Force is organized under the Secretary of the Air Force who operates under the authority, direction, and control of the Office of the Secretary of Defense (“OSD”), Department of Defense (“DOD”). The Secretary of the Air Force is the legal administrator of the acquisition of real property pursuant to 10 U.S.C. § 9013 and other specific real property acquisition authorities, but the United States Government (“United States”) is the owner of any real property to be acquired by the Air Force through such authorities.

3.3. Air Force Civil Engineer Center (“AFCEC”): The agency responsible for finalizing execution and performing management of the Air Force Readiness and Environmental Protection Integration (“REPI”) Program for the Air Force and this Agreement and the oversight of expensing and tracking of funds transferred to the Eligible Entity. AFCEC is under the direction and control of the Air Force Installation and Mission Support Center (“AFIMSC”) and the Deputy Assistant Secretary of the Air Force for Installations (“SAF/IEI”).

3.4. Air Force Civil Engineer Squadron: The Installation office responsible for submitting annual REPI proposals, identifying priority areas with the support of their Major Commands (“MAJCOMs”) and AFCEC; managing funds upon receipt from DOD and AFCEC, and coordinating transfer of funds to Eligible Entity with associated payment from Defense Finance & Accounting Services (“DFAS”) *after* AFCEC coordination and transaction approval evidenced by a signed Notice to Proceed as defined and described in this Agreement. After review, coordination, and acceptance of any interests in real property by the authorized delegate of the Secretary of the Air Force, the Air Force Civil Engineer Squadron maintains all easement documentation in accordance with DOD Air Force real property record requirements and assists in assuring the Eligible Entity provides copies of recorded instruments to AFCEC or the Office of the Secretary of the Air Force’s General Counsel, Installations, Energy and Environment Division, San Antonio, Texas, (“SAF/GCN-SA”).

3.5. Allowable Transaction Costs: Costs incurred solely related to the acquisition of the Real Property Interest(s), not including the agreed sales price, such as the following: (i) acquisition costs customarily solely attributable to close the transaction (which will be specified in the Notice to Proceed), (ii) land surveys, appraisals, environmental surveys/assessments, water rights research, title searches, title commitments, title insurance, escrow agent fees and expenses, real estate agent fees, recording fees, other settlement statement items not listed here and that are customarily paid by real property buyers in the local jurisdiction, legal fees, and fees for other professional services and other similar expenses that are not already performed by either party and attributable to the specific real estate acquisition. It does not include any costs for activities for which either party already incurs in their regular course of business (e.g. employee salaries, rents, professional licenses, rent for offices, supplies, etc.)

3.6. Annual Report: The document which summarizes project progress and provides an accounting of funding and disbursements under the Agreement for each fiscal year (FY) to the Project Manager (as defined in Section 3.25) and Installation no later than October 15 of each year.

3.7. Area of Interest: The total geographic area in which the Installation and Eligible Entity are authorized to execute acquisitions pursuant to a cooperative agreement, encroachment protection agreement, or other agreement pursuant to 10 U.S.C. § 2684a; also known as the agreement area in DOD project proposals and depicted in Attachment 1.

3.8. Baseline Documentation Report: A report that is prepared for each conservation easement. The Baseline Documentation Report includes written descriptions, maps, and photographs, and documents:

3.8.1. The conservation values protected by the easement, and

3.8.2. The relevant conditions of the property as necessary to monitor and enforce the easement.

3.9. Early Payment: An amount paid prior to the receipt of goods, services, or other assets that are ordinarily made only to payees to whom the Air Force has an obligation, and does not exceed the amount of the obligation.

3.10. Eligible Entity: A State, or political subdivision of a State, or a private entity who has entered into this Agreement, that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, and that is determined eligible as provided in 10 U.S.C. § 2864a(b). Upon signing the Agreement, the Eligible Entity certifies it is authorized by A.R.S. §§ 11-952, 11-254.05 and 28-8480 to perform and discharge its obligations under this Agreement, including without limitation, the acquisition and disposition of Real Property Interest(s) and to preserve and protect conservation or other similar values of the land it acquires.

3.11. Eligible Entity Program Manager (“EPPM”): The EPPM is the Eligible Entity’s official charged with the overall responsibility of management and guidance of the Agreement and associated real estate instruments for the Eligible Entity.

3.12. Encroachment: Any deliberate action by any governmental or non-governmental entity or individual that does, or is likely to inhibit, curtail, or impede current or future military activities within the Installation complex and/or mission footprint; or any deliberate military activity that is, or is likely to be incompatible with a community’s use of its resources.

3.13. Fiscal Year (“FY”): Fiscal Year means the federal funding year that begins on October 1 and ends on September 30 of the following year.

3.14. Habitat: An area that provides the environmental elements of air, water, food, cover, and space necessary for a given species to survive and reproduce.

3.15. Installation: Davis Monthan AFB, a base, under the jurisdiction of the Secretary of the Air Force.

3.16. Installation Encroachment Management Plan: Addresses encroachment and sustainment challenges that have the potential to affect both the Installation mission and the quality of life in surrounding communities. It is a cross-functional plan that integrates Installation efforts to sustain operations by preventing or reducing the impacts of encroachment on Installation facilities and missions. In order to protect the ability of the Installation to execute its mission, while complying with state and federal regulations and protecting the public’s health, safety, and welfare, the Installation-level encroachment management program builds on and integrates existing foundational programs, which may include, but are not limited to the Comprehensive Planning programs including the Air Installations Compatible Use Zones, the Installation Development Plan, the Joint Land Use Study, and/or the Installation Complex Encroachment Management Action Plan.

3.17. Installation Resource Advisor/Funds Manager: The Installation representative that is the principal point of contact for financial and fiscal issues arising under the Agreement related to the distribution of funds to the Eligible Entity that are obligated under this Agreement.

3.18. Military Installation Resilience (“Resilience”): The term “Military Installation Resilience” means the capability of a military installation to avoid, prepare for, minimize the effect of, adapt

to, and recover from extreme weather events, or from anticipated or unanticipated changes in environmental conditions, that do, or have the potential to, adversely affect the military installation or essential transportation, logistical, or other necessary resources outside of the military installation that are necessary in order to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential function.

3.19. Natural Resources Management, Monitoring, and Enforcement: Except where explicitly stated otherwise within the Agreement, this term only refers to activity that the Secretary of the Air Force or Secretary's authorized representative has determined is for the monitoring and management of natural, non-agricultural habitats of concern as defined under 10 U.S.C. § 2684a(a)(2) and (d)(3). If there are characteristics of both natural habitat and agricultural uses within the same parcel, it still qualifies as natural habitat. Only with written approval from the Project Manager (as defined in Section 3.25) may the Eligible Entity receive funds for Natural Resources Management, Monitoring, and Enforcement, as further set forth in Section 5.4.2.

3.20. Notice to Proceed ("NTP"): A written notification from the Project Manager (as defined in Section 3.25) to the Eligible Entity to proceed with the acquisition of a Real Property Interest as depicted in Attachment 1. Depending upon the acquisition process and schedule, an NTP to the Eligible Entity will be issued as follows: (Phase I) Eligible Entity request to commence due diligence for a Real Property Interest and begin plans to expend Allowable Transaction Costs (as defined herein) and concurrent steps authorized and described in Section 8.4 to carry out the purposes described in Article 4; (Phase II) Eligible Entity request to proceed with final acquisition and closing of the Real Property Interest initially described in a Phase I NTP, following Project Manager (as defined in Section 3.25) approval of completion of due diligence, including total agreed Acquisition Costs (as defined herein, sales price and Allowable Transaction Costs). Attachment 3 contains the basic form of the Phase I NTP and Attachment 4 contains the basic form of the Phase II NTP, including instructions on what the Eligible Entity would need to submit to receive the appropriate NTP for the actions the Eligible Entity would commence during the acquisition process.

3.21. Secretary of the Air Force Office of General Counsel, Installations, Energy, and Environment Division-San Antonio ("SAF/GCN-SA"): SAF/GCN-SA is the Air Force legal counsel for 10 U.S.C. § 2684a actions. SAF/GCN-SA controls, coordinates and reviews the Agreement (including any amendments) and all easements prior to seeking appraisals based on such easements and prior to closing and execution. If a legal question or issue arises beyond the scope of 10 U.S.C. § 2684a, SAF/GCN-SA may recommend, as necessary, that the Installation coordinate or seek review from appropriate legal counsel in accordance with Headquarters Air Force Mission Directive 1-14, *General Counsel and the Judge Advocate General*, 29 December 2016; and, as necessary, SAF/GCN-SA will also coordinate support from the appropriate SAF/GC division (e.g. SAF/GCA for fiscal issues whose resolution may affect Air Force policy).

3.22. Parties: For purposes of this Agreement, the Parties are the United States Air Force and the Eligible Entity.

3.23. Priority Area: The defined area(s) within the project area of interest that contains the Installation's highest priority parcels or geography, as determined by the Installation and the Air

Force planning processes. A project may have multiple priority areas numbered or differentiated by order of priority of importance.

3.24. Project: The portfolio of transactions associated with a specific installation (including joint bases) targeted for conservation and/or compatible land use partnering. A project may include multiple parcels and transactions, and is defined by planned and executed acquisition activities within the Area of Interest and across funding years.

3.25. Project Manager (“PM”): The PM is the Air Force’s representative from the Air Force Civil Engineer Center charged with overall project management responsibility, including providing guidance on the project, assuring compliance with the Agreement, and establishing coordination and communication on the review and completion of the associated real estate transactions and instruments. PM assures Installation, TPM (as defined in Section 3.29) and Eligible Entity fulfill their requirement to coordinate transaction activities and dates of execution of any transactions and instruments related to the performance of the Agreement with the PM, who in turn assures SAF/GCN-SA receives all necessary documentation for coordination, review and final approval.

3.26. Political Subdivision: Political subdivision is a subdivision of a State which has been delegated certain functions of local government. This can include counties, cities, towns, villages, hamlets, boroughs, and parishes.

3.27. Real Property Interest(s): Real Property Interest(s) is(are) the target interest(s) in real estate acquired by the Eligible Entity pursuant to this Agreement, including those added by any amendments to the Agreement. This could consist of a deed for fee simple, a conservation easement, a restrictive use easement, or a combination of both a conservation and restrictive use easement. Any real property interest(s) conveyed to the United States, if conveyed, will be the minimal interest necessary to ensure the property concerned is used in a manner consistent with the purposes of this Agreement and will be less than a fee simple interest. As the term is used herein, it does not include a real property interest conveyed to the United States as a *contribution* to the Agreement pursuant to 10 U.S.C. § 2684a(d)(4)(E)(iii) by the Eligible Entity.

3.28. State: A State includes any department or named agency of a State authorized by law to enter into transactions of the nature contemplated by this Agreement. A State includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

3.29. Technical Project Manager (“TPM”): The TPM is the Installation’s technical representative charged with coordinating with, advising and updating the PM on the status of all activities affecting this Agreement, including but not limited to, the schedule for the closing of any real estate transactions; and, as such, shall coordinate transaction activities and dates of execution of transactions and instruments related to the performance of the Agreement with the PM in accordance with the time frames provided within the Agreement to provide sufficient time for coordination, review and approval from the PM and SAF/GCN-SA for all transaction documents and Real Property Interest documents, e.g. easement.

ARTICLE 4 – SUMMARY OF SCOPE/PURPOSE

4.1. The primary purpose of this Agreement is to structure an acquisition and cooperative arrangement Project for the protection and management of Real Property Interests located within the Area of Interest as defined herein and identified under this Agreement, and as such Real Property Interests may be further identified from time to time based upon willing landowners and the viability to execute certain acquisitions which are dependent upon funding, market and other constraints, despite best efforts throughout the term of this Agreement. The scope and purpose of this Agreement includes all activities and goals enumerated in this Agreement, including all attachments.

4.1.1. To accomplish this purpose, 10 U.S.C. § 2684a authorizes the secretary of a military department to enter into agreements with a State or political subdivision of a State, or a private conservation organization, to limit the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace, including, but not limited to, a training or testing ranges or military training routes.

4.1.2. The protection and management of Real Property Interests identified for acquisition will limit and/or prevent encroachments as follows: (i) limit development or use of the land that would be incompatible with the mission(s) of the Installation; (ii) preserve habitat on the land in a manner that is compatible with environmental requirements or which may eliminate or relieve environmental restrictions that could restrict, impede, or interfere with military training, testing, or operations on or near the Installation; (iii) maintaining or improving military installation resilience; or (iv) protect Clear Zone Areas from use or encroachment that is incompatible with the mission of the Installation.

4.2. Specifications for performance are contained in Article 8.

4.3. Due to the nature of the role of the Eligible Entity in this acquisition process, the Real Property Interest(s) that will be acquired and/or conveyed will be further described. The Eligible Entity will provide perpetual restrictive use easements to the Air Force on properties owned by the Eligible Entity that lie within the vicinity of military airspace that will serve as the Eligible Entity's cost share contribution on real property interest acquisitions as further described in Section 5.2 . If a conservation easement is acquired, the Eligible Entity will arrange for conveyance of such interest to itself or a qualified entity pursuant to Section 8.6.3. If a fee interest is acquired, the Eligible Entity may take title to the fee interest or arrange for conveyance of the fee interest pursuant to Section 8.6.3, and convey a restrictive easement to the United States or to another qualified entity pursuant to Section 8.6.3. Notwithstanding the foregoing, the Eligible Entity may designate that a different eligible entity pursuant to 10 U.S.C. § 2684a(b) hold the Real Property Interest(s) if the Eligible Entity chooses not to be the holder of the Real Property Interest(s), so long as the real estate instrument contains the necessary provisions that protect the Air Force and comply with 10 U.S.C. § 2684a. For example, if the restrictive easement is to be held by an eligible entity that is not a State or local government and included Air Force funding for the acquisition, the Air Force, pursuant to 10 U.S.C. § 2684a(d)(5), shall require that such recorded restrictive easement include a right to demand transfer of the interest to the United States through the Secretary of the Air Force or his or authorized representative. Any conveyance to the United States

is subject to the Air Force funding contribution pursuant to this Agreement and will be the minimal interest necessary to accomplish the purposes of this Agreement.

ARTICLE 5 – COST SHARING

5.1. This Agreement is a cost-share agreement with a requirement that can include cash, cash contributions from other agencies and organizations, land owner donations, Eligible Entity donated real property, and/or agreed in-kind services performed by the Eligible Entity. As such, the Eligible Entity may solicit funds from third party sources to leverage the Air Force's contributions and support the purposes of this Agreement. All funds solicited and obtained by the Eligible Entity from any third party source outside the DOD (including non-DOD federal or state programs, donors and other non-governmental organizations) may be attributed to the Eligible Entity as part of its agreed upon share of costs for Real Property Interest(s) acquired under this Agreement.

5.2. The Eligible Entity's Acquisition Cost share shall be fifty percent (50%) and shall be: in cash, cash contributions from other agencies and organizations, or donated real property interests with a current fair market value as evidenced by an appraisal in compliance with general federal appraisal standards more accurately described in Article 8.4, and/or agreed in-kind services acceptable and approved by the PM. If Eligible Entity proposes to also provide in-kind services, examples of in-kind services may include, but are not limited to: easement or other document drafting, other real estate transaction services, Baseline Documentation Reports, Environmental Baseline Site Assessments, legal services, or other natural resource-related services. However, in-kind services do not include services that the Eligible Entity may already be performing under a separate contract or other agreement for which the Eligible Entity is receiving payment by the United States for such services, or for services for which the Eligible Entity is already engaged as part of their organization activities for which costs are incurred regardless of Eligible Entity participation under this Agreement (e.g. employee salaries, professional licenses, rent, supplies, etc.).

5.3. The Air Force's share of Acquisition Costs shall be fifty percent (50%) and shall be in cash and/or transferred real property with a current fair market value as evidenced by an appraisal in compliance with general federal appraisal standards more accurately described in Article 8.4.. If the Eligible Entity chooses to apply all Air Force contribution funds towards the Real Property Interest's purchase price, the Air Force is not obligated to request additional funds to contribute to related Allowable Transaction Costs and will expect the Eligible Entity to pay any outstanding related Allowable Transaction Costs.

5.4. Types of costs associated with this Agreement.

5.4.1. Acquisition of identified parcels, either fee simple or a lesser interest such as a conservation or restrictive use easement. As previously defined in Article 3, Acquisition Costs to acquire the subject Real Property Interest(s) include only the purchase price and the Allowable Transactions Costs. The acquisition sales price will be at or below fair market value as established by an appraisal in compliance with general federal appraisal standards more accurately described in Article 8.4.2.1. pursuant to 10 U.S.C. § 2684a(d)(4)(C) and (d)(7).

5.4.2. Easement Management and Monitoring. Requests for this funding must be supported by a management plan, be submitted before closing and through a Notice to Proceed, and approved by the PM. Compliance with Section 7.3 is required before payment can be approved and dispersed.

5.4.2.1. Post-acquisition Natural Resources Management, Monitoring, and Enforcement costs as defined in Section 3.19 under this Agreement are not Acquisition Costs and may include: (i) the cost of monitoring, and, if necessary, enforcement of conservation easements acquired under this Agreement that meet the definition of Natural Resources Management, Monitoring, and Enforcement as provided herein; and, (ii) the cost of managing or restoring natural resources to meet the purposes of this Agreement. The Air Force contribution must be in one lump sum, one time at the acquisition closing and be placed by the Eligible Entity into an interest-bearing account and used in accordance with 10 U.S.C. § 2684a(d)(3)(A),(B).

5.4.2.2. Post-Acquisition general easement monitoring and enforcement costs are not Acquisition Costs, but the Air Force may contribute to such costs pursuant to DOD REPI program guidance.

5.4.2.3. Subsequent to closing, any additional management and monitoring costs not accounted for prior to closing and requested in a Notice to Proceed, are not costs for which the Air Force will provide a contribution for such future management.

ARTICLE 6 – FUNDING

6.1. Expenditures by the Air Force under the Agreement will be subject to the availability of funds.

6.1.1. The Air Force will obligate funds and authorize payments or expenditures consistent with all normal limitations on the use of appropriated funds as may be applicable, e.g., period of availability (purpose, time (Bona Fide Needs Rule, if applicable), amount); definite and certain obligation; type of funds. No provision in this Agreement should be interpreted to require the Air Force to obligate funds and authorize payment or expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable federal law.

6.1.2. If funds are available, the Air Force will pay for the agreed upon share of Acquisition Costs and, if approved by the PM as provided herein, a contribution lump sum for Natural Resources Management, Monitoring, and Enforcement costs as provided in this Agreement. When DOD or Air Force funds are made available for the purposes of this Agreement, this Agreement, including any amendments, is the obligating document for such FY funds and may not be de-obligated without SAF/IEI or AFCEC/CI approval.

6.1.3. Additionally, the performance of the Air Force under this Agreement is contingent upon it being allocated annual funds by DOD under DOD's REPI Program. Such allocation will require an annual amendment to specify the Air Force's funds contribution for each fiscal year. Such an amendment shall not otherwise modify provisions of this Agreement.

6.2. Funding Limitation. The maximum funding limitation for the Air Force is the amount specifically obligated by this Agreement or by amendment to this Agreement. The following funding amounts are carried over from the Encroachment Management Agreement, as amended: for FY19 the remaining total amount is **SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) of OSD REPI Funds**; for FY20 the remaining total amount is **ONE MILLION DOLLARS (\$1,000,000.00) of OSD REPI Funds and TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) of AF REPI Funds**. Notwithstanding Section 11.2, the Air Force may unilaterally amend the Agreement to document this funding obligation. The Air Force will forward a copy of the amendment to the Eligible Entity upon execution by the Air Force.

6.3. Funding Allocation. Future funding allocations to the Installation for use by the Eligible Entity pursuant to this Agreement will be obligated by an amendment to this Agreement as provided herein.

6.4. The Eligible Entity acknowledges that it can make no binding commitment dependent on Air Force funds until funds are obligated against the Agreement and the Air Force has authorized expenditure of such funds for the specific Real Property Interest(s) to be acquired as evidenced by a NTP and which will be jointly completed by the Air Force through the PM and the Eligible Entity, which will specify the Allowable Transactions Costs and agreed purchase price. More than one NTP may be prepared and agreed to between the Parties as needed depending upon the release and availability of funding and the progress of an acquisition. The Eligible Entity may engage landowners in negotiations to develop preliminary agreements in principle, but shall not enter a binding agreement for purchase and sale of such property interests using Air Force funds without first receiving: (i) concurrence of the Air Force; (ii) assurance that sufficient Air Force funds are available; and (iii) an Air Force NTP when Eligible Entity will be using Air Force funds for an acquisition.

6.5. All Air Force funds to be contributed through this Agreement shall be considered obligated upon signature of the authorized signatory through this Agreement, including amendments to the Agreement. Even though funds will be obligated, the Eligible Entity must follow the procedures provided in Section 6.4, and if applicable, Section 3.20, and receive Air Force concurrence and approval prior to receiving funds.

6.6. The Eligible Entity's obligations under the provisions of this Agreement are contingent upon Air Force funding. If for any reason the Air Force does not provide funds for the acquisition of a Real Property Interest(s) by the Eligible Entity in the vicinity of or ecologically related to the Installation, the Eligible Entity may elect in its sole discretion whether to proceed with such acquisition independent of the Air Force and the terms of this Agreement. The Eligible Entity will not be obligated to perform under this Agreement if, through no act, omission, or fault on its part and notwithstanding its reasonable best efforts to obtain the same, governmental funding, or private foundation grants committed to it for the purchase of any Real Property Interest(s) are withdrawn, frozen, or otherwise made unavailable to the Eligible Entity to carry out the obligations contemplated under this Agreement.

ARTICLE 7 – PAYMENT

7.1. Obligation and Payment. The Air Force will execute projects in accordance with all laws and regulations listed in Article 2. All funds transmitted must be used for the project and project purposes under this Agreement. Funds available for each future FY must be obligated by amendment to this Agreement no later than September 30 of the fiscal year in which the funds were made available. Funds obligated must be expended by the end of the fifth fiscal year in which the funds were obligated. For example, if \$200,000 was obligated April 20, 2017, such funds must be expended by September 30, 2022. If the funds are not expended, they must be returned to the Air Force, including any interest accrued. The Eligible Entity will submit a copy of each invoice to the TPM and PM at least twenty-one (21) days prior to any Air Force payment due.

7.2. Early Payments for Acquisition Costs.

7.2.1. The Eligible Entity may receive Early Payments as defined herein under this Agreement that are necessary to carry out the purposes of this Agreement. The Eligible Entity must request such funds by requesting a Phase I NTP as defined in 3.20 and in accordance with paragraph 8.4; and a Phase II NTP at least thirty (30) days prior to the date needed for closing on parcels in accordance with paragraph 8.4.2. The Eligible Entity will provide a copy of all such requests to the PM. The request for funds and issuance of a NTP will include the following supporting documentation: property identification (name) including where it is identified in Attachment 1 of the Agreement or, if applicable, any amendments, estimated closing date, acreage, location/priority area, appraised value of Real Property Interest(s) or estimated value if still awaiting an appraisal, amount of Air Force funding requested, nature of interest being acquired, and specified benefit to mission. Such Early Payments must be limited to the minimum amount needed and be timed to be as close as is administratively feasible to the actual disbursements required in the performance of this Agreement.

7.2.2. For the purpose of this Agreement, Early Payments are treated differently than lump sum payments (see paragraph 7.3 for Lump Sum Payments). All such Early Payments shall be deposited in interest bearing and insured accounts unless the best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on federal cash balances, or the depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash balances.

7.2.3. Interest earned on Early Payments valued over \$250 shall be remitted annually to Defense Finance Accounting Services (DFAS) through coordination with the Installation Resource Advisor/Funds Manager. After completion and/or closeout of effort against this Agreement, residual or unliquidated advance payment funds shall be coordinated for disposition.

7.2.4. The Early Payments provided to the Eligible Entity are to be used solely for the items of allowable Acquisition Costs incurred in the performance of this Agreement as set forth in this Agreement and in accordance with the NTPs.

7.2.5. The Eligible Entity agrees to minimize, to the extent possible, the time elapsing between the transfer of Early Payments and the use of those Early Payments by the Eligible Entity for approved purposes under this Agreement.

7.3. Lump Sum Payment: Natural Resources Management, Monitoring, and Enforcement or General Easement Monitoring and Enforcement.

7.3.1. Application of Lump Sum Payment. This Agreement addresses the use, development, preservation, protection, and/or restoration of real property in the vicinity of or ecologically related to the Installation. To that end and when determined appropriate by the PM, the Air Force may make a lump sum payment of an amount intended to cover Natural Resources Management, Monitoring, and Enforcement costs as defined and provided for herein or for general easement monitoring and enforcement to the Eligible Entity and permit the Eligible Entity to place the sum in an interest bearing account with the interest earned applied to the same purpose that the principal was authorized to fund (i.e., furthers the specific purpose of the principal) as long as the account exists, regardless of the duration of this Agreement.

7.3.2. Supporting Documentation peculiar to Lump Sum Payments. Prior to Air Force approval of a lump sum payment the EEPM must provide the PM the specific management objectives and management plan (and associated/projected milestone dates) expected to be covered by the lump sum payment as well as any specific limitations sought by the Parties as a result of these objectives. The provision of such documentation must be provided with a request for a Phase II NTP at least thirty (30) days prior to closing to provide sufficient time to review and determine appropriateness of requested amount to accomplish the management objectives and management plan for the acquired Real Property Interest.

7.3.3. Final Disposition. Upon completion or closure of the effort for which the lump sum payment was established or if it is determined that continued management under this Agreement be impractical, any remaining unliquidated funding (to include interest) shall be coordinated with the authorized PM, for specific disposition instructions and/or remittance to DFAS. In the event that funds are remitted to DFAS, a copy of the transmittal letter stating the specific amount of remittance shall be sent to AFCEC.

7.4. Records. The Eligible Entity shall maintain adequate records to account for federal funds received, as well as cost share elements, and expenditures under this Agreement. Upon completion or termination, whichever occurs earlier, the Eligible Entity shall furnish to the PM a copy of the annual financial report. The Eligible Entity's relevant financial records are subject to examination or audit by the United States for a period not to exceed three (3) years after expiration of the term of this Agreement. The TPM and PM or designee shall have direct access to sufficient records and information of the Eligible Entity upon any request by the TPM or PM, to ensure full accountability for all funding under this Agreement. Upon ninety (90) days prior written notice, such audit, examination, or access shall be performed during business hours on business days and shall be subject to the security requirements of the audited party. The Eligible Entity shall have a minimum of sixty (60) and a maximum of ninety (90) days from the date of written notice to respond.

7.5. Fund Transfer Process by the Installation. The Installation shall not initiate the transfer of any funds to the Eligible Entity until a PM has issued a NTP. Once funds are received from AFCEC or OSD, a Miscellaneous Obligation Reimbursable Document will be generated in the government financial system. When a willing seller has been identified, the Eligible Entity will request a Phase I NTP from AFCEC PM to initiate due diligence and acquisition. After the issuance of the NTP, the Eligible Entity must provide invoices to the TPM, and the PM for review. Following PM review and concurrence, the Installation will transfer funds to the Eligible Entity. The actual fund transfer remains subject to Section 6.1.

7.6. Cost and Expense Verification Procedures. For any payments requested for items not already listed in Attachments 3 or 4, the Eligible Entity shall provide a detailed description of the activities for which the Eligible Entity is requesting payment to the satisfaction of the PM prior to approval of such request for payment..

ARTICLE 8 – RESPONSIBILITIES, OBLIGATIONS, AND DELIVERABLES

8.1. Introduction.

8.1.1. The Installation has determined that it is in the best interest of the Air Force to take steps necessary to implement applicable portions of the Installation's Encroachment Management Plan for the protection of lands and other natural resources to avoid or minimize current or anticipated adverse impacts to Installation's military mission based on the following:

8.1.1.1. The development of lands in the vicinity of Installation for incompatible purposes will result in conflicts and land uses adversely impacting necessary military activities. Preserving lands and natural resources near Installation will lessen land-use restrictions on military lands, missions, and programs; and/or

8.1.1.2. A significant and necessary element for minimizing restrictions on military lands, missions, and programs is the limiting of or planned management of incompatible development of properties adjacent to or in the vicinity of or ecologically related to Installation. Management of such development can be achieved by acquiring permanent easements or other land use controls that restrict development of open lands and/or provide for conservation of natural resources adjacent to or in the vicinity of or ecologically related to Installation. These land use actions will restrict development of private lands but allow for continued private ownership and may permit mission compatible uses such as, but not limited to, agricultural uses, ranching, utility infrastructure, passive outdoor low intensity recreation, and at a minimum will implement Air Installation Compatible Use Zone required land-use restrictions where published.

8.1.2. The Eligible Entity certifies and represents that it is a political subdivision of the State of Arizona, organized under the laws of the State (A.R.S. §§ 11-101 AND 11-112) and authorized to enter into an agreement in accordance with 10 U.S.C. § 2684a(b)(1). The Eligible Entity also certifies and assures that any eligible entity proposed and designated to be the holder of a Real Property Interest under this Agreement, is a eligible entity pursuant to 10 U.S.C. 2684a(b).

8.1.3. The Eligible Entity is committed to working with Installation to preserve lands and natural resources and/or restrict incompatible land uses near Installation for the benefit of the residents of surrounding communities and the State of Arizona and to avoid or minimize the potential for adverse impacts to Installation's military mission.

8.1.4. The Eligible Entity has the proven expertise to encumber private lands with permanent easements, and to work collaboratively with private landowners and public agencies to develop land use plans that provide for land uses that are consistent with such easements and the Installation's military mission.

8.2. Background.

8.2.1. Uses of lands adjacent to, in the vicinity of, or ecologically related to Installation and other military installations have resulted in a threat of curtailment of significant training functions or other mission activities. The scope of this Agreement allows for the acquisition of Real Property Interests and/or water rights to alleviate such threats.

8.2.2. Many promising concepts and strategies for controlling and/or management development have been developed by the Department of the Air Force, private conservation organizations, and local governments and States. They include the purchase of permanent conservation and/or restrictive easements restricting inappropriate land uses, providing for compatible open space land uses, and engaging local communities and/or regulators or other such public agencies in land use planning efforts. Any funding of these efforts is, of course, subject to the availability of funding.

8.2.3. Successful development of the Installation Encroachment Management Plan is dependent on:

8.2.3.1. Identification of real estate/lands for protection;

8.2.3.2. Acquisition by an Eligible Entity, through a voluntary purchase or donation by a landowner, of permanent easements or other permanent land use restrictions limiting incompatible land uses in the vicinity of an installation;

8.2.3.3. If necessary, acquisition of property by fee simple purchase (ownership to remain with Eligible Entity, not United States);

8.2.3.4. Engagement of local communities, landowners, and public agencies in the identification and promotion of compatible land uses on protected properties.

8.2.3.5. Coordination among Installation and Eligible Entity, as well as alignment of effort and program tracking.

8.2.4. If the Eligible Entity, PM and TPM jointly identify other Real Property Interest(s) that would meet the purposes and objectives of this Agreement, the TPM agrees, after addition and approval of those Real Property Interest(s) to the Installation Encroachment Management Plan and

by amendment of this Agreement, to take necessary steps to have the Eligible Entity acquire an agreed upon Real Property Interest(s) in accordance with the procedures set forth in this Agreement.

8.3. Objectives.

8.3.1. To support and sustain the military mission at the Installation through elimination or reduction of incompatible land uses on properties adjacent to Installation. This Agreement's basic purpose is avoiding encroachment on the Installation's approach/departure corridors and potential land use conflicts through real estate transactions on tracts in the vicinity of Installation. The Agreement will produce lasting collaborations between the Air Force and the surrounding community and help mission requirements at the Installation.

8.3.2. To impose restrictions on real property near the Installation by encumbering private property in the vicinity of the installation with permanent easements or other similar land use restrictions to avoid incompatible development of high priority land parcels, and where necessary by acquiring such property in fee. This will be accomplished by encumbering or acquiring the priority parcels identified in Attachment 1.

8.4. Eligible Entity Responsibilities.

8.4.1. After approval from or coordination with the PM, and if required under the circumstances or requested by the Eligible Entity, issuance of a Phase I NTP, the Eligible Entity may establish contact with the owners of parcels depicted in Attachment 1 within the Area of Interest of this Agreement, or within agreed amendments if applicable. The Eligible Entity shall work with the PM and the TPM to set priorities and develop a strategy that is appropriate for the long-term goal of meeting the purpose of this Agreement, and develop agreed schedules or project milestones for each acquisition and closing. Priorities may be re-evaluated upon development of other compelling relevant information. Each acquisition or other 10 U.S.C. § 2684a authorized transaction must be supported by concurrence of the TPM and PM to ensure that the terms support the military mission while contributing to the identified objectives. The acquisition strategy shall be for Eligible Entity to acquire parcels depicted in Attachment 1 and in the Area of Interest in this Agreement or later identified in an amendment to the Agreement, in fee simple or a lesser interest, such as an easement, or purchase of development rights.

8.4.2. If the Eligible Entity, the Air Force as provided in Section 8.4.1, and any interested parties reach an agreement in principle for the purchase of a Real Property Interest, the Eligible Entity may elect to enter into an option agreement or contingent purchase agreement with the seller of the Real Property Interest, which will set forth a period of time during which the Eligible Entity will perform due diligence prior to making a binding commitment (such as by exercising the option or waiving contingencies) to acquire the Real Property Interest. Any funding by the Air Force will be subject to the agreed Acquisition Costs as defined herein and provided for through the issuance of a Phase I NTP, which will not authorize a payment to owners in an option or contingent purchase and sale agreement unless such payment is applied to the purchase price that meets the fair market value requirement provided in 10 U.S.C. § 2684a(d)(4)(C) at the closing. The Eligible Entity's

due diligence prior to final negotiations and making a binding commitment will include, at a minimum:

8.4.2.1. Appraisal. Eligible Entity must obtain an appraisal of the interest being acquired to establish Fair Market Value of the Real Property Interest(s). A copy of the appraisal will be provided to the Air Force as soon as it is available so the Air Force can accomplish its review of the appraisal.

8.4.2.1.1. An appraisal will serve as the basis for determining the Acquisition Costs of the Real Property Interest(s) being funded by this Agreement. Therefore, and by way of example, if the Air Force interest will be an easement and the interest acquired by the Eligible Entity is a fee interest, the appraisal must include both the fair market value of the fee interest and the easement interest. No specified amount of funds beyond the cost of the appraisal may be promised or expended before such an appraisal is completed and reviewed by a qualified federal government official, when required.

8.4.2.1.2. The Air Force may accept an appraisal prepared or adopted by a non-federal entity as satisfying the applicable requirements of Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4651) and 40 U.S.C. § 3111 if the Air Force determines the appraisal or title documents substantially comply with these requirements.

8.4.2.1.3. Appraisals supporting acquisition of the Real Property Interest(s) must also meet the Uniform Appraisal Standards for Federal Land Acquisitions (the “**Yellow Book**”). Should the cost of obtaining a Yellow Book appraisal exceed the cost of a standard appraisal, the Air Force agrees to pay the incremental increase. Notwithstanding this provision, if the application of the Yellow Book standards affect the ability to calculate fair market value of a property interest due to any special or unique circumstances, the Air Force may accept an appraisal as per Section 8.4.2.1.2. Any such deviation from the Yellow Book must be coordinated through the TPM and PM and approved by the Air Force.

8.4.2.1.4. The date of the Appraisal must be within twelve (12) months from the date of the Closing between the landowner and the Eligible Entity. If and when a Real Property Interest is conveyed to the United States in a later transaction/closing, not including when United States may exercise its right to transfer pursuant to this Agreement at some future date as provided in the recorded Real Property Interest of the initial acquisition, the Appraisal must be within twelve (12) months of that closing/transfer to the United States.

8.4.2.2. Easements or Other Deeds (“Deeds”). Provide the Air Force, through the PM, the proposed easements or other deeds (e.g. quitclaim deed, warranty deed, if transfers or exchanges of property are contemplated as provided in 10 U.S.C. § 2684a(d)(4)(E)(iii) or 10 USC 2684a(d)(4)(B)), for Air Force review at least forty-five (45) days before closing to determine compliance with the purposes of this Agreement, compliance with applicable laws, and that such documents would adequately protect rights of the United States.

8.4.2.3. Environmental Due Diligence. Obtain an environmental baseline site assessment (“ESA”) that complies with the requirements of 42 U.S.C. § 9601(35)(B)(i) and uses methodologies consistent with the latest American Society for Testing and Materials (ASTM) Standard E-1527 or some lesser documented environmental assessment, provided Eligible Entity and the Air Force agree that a more thorough level of due diligence is not necessary. Based on this ESA, the Eligible Entity and Installation will determine whether additional field investigations of soil, sediment, surface water, and other environmental media are warranted.

8.4.2.4. Survey. Unless otherwise agreed by the PM, in writing, Eligible Entity must obtain a boundary survey of the property interest being acquired. The survey shall determine the exact acreage and location of the parcels and identify and locate all existing encroachments, easements, and any other encumbrances affecting the parcels. The survey shall be sufficient to enable title insurers to delete all standard boundary exceptions to coverage under the title policy relating to surveys.

8.4.2.5. Title. Eligible Entity must obtain a title search of the property to determine any possible flaws in title that require correction by the owner prior to acquiring the property interest. Title shall comply with the United States Department of Justice Title Standards and, when the United States is taking a real property interest, the Eligible Entity shall provide sufficiency of title review and letter acceptable to the Air Force. Unless otherwise agreed, when a Real Property Interest(s) is conveyed to the United States upon request by the Secretary of the Air Force or his or her authorized delegate, in accordance with the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions, a title insurance policy having the United States of America as a named insured will use form ALTA U.S. Policy 9-28-91 (Revised 12-3-12) for the interest(s) conveyed to the United States.

8.4.2.6. The Eligible Entity conducts the initial review of all due diligence materials described in this Section 8.4 and ensures the Real Property Interest is accurately reflected in such documents and shall provide the Air Force with all documents as they become available for Air Force review. Such documentation will be provided to the Air Force, through the PM, by the Eligible Entity at least thirty (30) days prior to issuance of a Phase II NTP, unless otherwise agreed by the PM. Notwithstanding the foregoing, the Deeds will be delivered to the Air Force for review and approval, as provided in Section 8.4.2.2.

8.4.3. Once due diligence is completed and Eligible Entity is satisfied: (i) that the acquisition can occur at or below the appraised Fair Market Value, (ii) that no environmental hazards requiring remediation have been discovered by an environmental assessment on the site, (iii) that from the title due diligence there are no encroachments or other issues that must be cleared in order to obtain title insurance, and (iv) the applicable National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et. seq.) requirements have been met, the Eligible Entity will confer with the PM and TPM to develop a final negotiation strategy and establish the agreed total Acquisition Costs for purchase of the subject Real Property Interest(s).

8.4.4. When the Eligible Entity and the owner agree on a price at or below the Fair Market Value of the Real Property Interest(s) to be acquired, the Eligible Entity shall invoice the Air Force and request a Phase II NTP. The invoice shall indicate all costs that were or will be incurred by

Eligible Entity in execution of the transaction and any matching funds or agreed in-kind services provided by the Eligible Entity, including third-party funding contributions provided to the Eligible Entity for the transaction. After agreeing to the final share of Acquisition Costs and, if applicable and approved by the PM, the Natural Resources Management, Monitoring and Enforcement costs as defined herein or general easement management and enforcement costs for a subject Real Property Interest(s), and concurrence by the PM and TPM with the final terms of the purchase and sale agreement or other binding commitment, the PM and TPM, to the extent of funding is available, will give Eligible Entity a Phase II NTP documenting the agreed and authorized total Acquisition Costs to further negotiate and enter into such final commitment to purchase the Real Property Interest. The concurrence by the PM and TPM and issuance of a Phase II NTP will be subject to the Eligible Entity accepting the following, otherwise the PM and TPM will decline to participate in the transaction:

8.4.4.1. The amount contributed to the sales price by the Air Force for any Real Property Interest(s) conveyed to the United States at closing or to be conveyed at some future date upon the demand by the United States through the Secretary of the Air Force or his or authorized representative, shall not exceed the appraised fair market value of that interest as per 10 U.S.C. § 2684a(d)(4)(c). That value will be based upon the appraised value at the time of the conveyance, or at the time the United States is given the right to demand conveyance in the language of the recorded Real Property Interest(s).

8.4.4.2. If the Air Force determines a Real Property Interest will not be immediately conveyed, the Eligible Entity will ensure the recorded Real Property Interest will include the necessary clauses providing the Secretary of the Air Force, at his or her option and through an authorized delegate, the right to demand transfer of the subject property to the United States should the subject property be used for a purpose inconsistent with the terms of the recorded Real Property Interest(s).

8.4.4.3. The final purchase and sale contract shall include a condition that closing is subject to the property being in suitable condition for transfer and the title being clear of any defects.

8.4.5. If the above conditions are satisfied and the PM and TPM agree to participate in the transaction and issue a Phase II NTP, the Eligible Entity will be authorized to indicate to the owner the Air Force's contribution of available funding, up to the agreed-upon share of Acquisition Costs, if necessary to demonstrate good faith.

8.4.6. Any parcel either encumbered through an easement, other real property restriction, or purchased in fee simple pursuant to this Agreement shall be monitored and enforced for compliance with such restrictions by Eligible Entity for the purposes set forth in this Agreement and according to the terms of the real property documents, subject to the ability of the Eligible Entity to transfer the Real Property Interest(s) to an approved transferee under Article 8.6.3, in which case such monitoring and enforcement obligation shall be assigned to and assumed by the approved transferee by an instrument acceptable to the Air Force. The Air Force will not be responsible for monitoring of any property, or interest therein, acquired under this Agreement for compliance with the easement or other real property restrictions, but will be given the right to

enforce them in the event such action by the Air Force becomes necessary. Eligible Entity's obligation under this paragraph shall survive termination of this Agreement.

8.4.7. The Eligible Entity shall ensure the immediate recording in the county land records of any Real Property Interest(s) acquired by it and/or conveyed to the United States. The Eligible Entity will obtain a derivation of title clause wherever customary or required by statute.

8.5. Eligible Entity Deliverables.

8.5.1. Eligible Entity will provide annual reports of the progress made toward the acquisition of the Real Property Interest(s), including status of specific responsibilities, objectives, and deliverables, shall be submitted to AFCEC in coordination with the Installation by the established due date after the close of each fiscal year. The report shall provide information on how funds have been expended during the reporting period and include information that the Installation needs to properly promote and manage the project. Such information should include a map with the parcels acquired or proposed for acquisition under this Agreement and a table that lists: the acquisition name (or landowner's name), the tax identification number, nature of realty interest acquired, acreage, costs, source of funds, and land uses (current or intended).

8.5.2. Eligible Entity will prepare any transactional documents developed to carry out the tasks performed under this Agreement. Such documents include, but are not limited to, contracts for purchase and sale, inspections or investigations, appraisals, title searches or insurance, deeds, surveys, and final copies of all documents after they have been recorded. These shall be provided to both the PM and the TPM, within thirty (30) days of closing.

8.5.3. If applicable, the Eligible Entity will prepare Baseline Documentation Reports on all properties protected through this Agreement. These reports should conform to guidelines as established by the Land Trust Alliance (LTA) Standards and Practices and shall be provided to both the PM and the TPM.

8.5.4. Eligible Entity will prepare annual monitoring reports on all properties protected through this Agreement. Said reports should conform to standards as established by the LTA. These reports shall be provided to both the PM and the TPM, and this obligation may be assigned to and assumed by an approved transferee, where such transfer is undertaken in accordance with Article 8.6.3, and by an instrument acceptable to the Air Force.

8.6. Other Conditions.

8.6.1. Eligible Entity shall not enter non-federal real property to collect information regarding the property unless the owner has: (i) consented to the entry; (ii) been provided reasonable notice of the entry; and (iii) been notified that any raw data collected from the property must be made available at no cost, if requested by the landowner.

8.6.2. Title to the Real Property Interest(s) acquired, whether fee simple, easement, or other land use restriction, may be held by Eligible Entity subject to the Air Force's right to demand transfer under 10 U.S.C. § 2684a(d)(5) of that portion of the Real Property Interest(s) necessary to

ensure the property is developed and used consistently with the purposes of this Agreement and 10 U.S.C. § 2684a. Such right shall be explicitly stated in the recorded Real Property Interest(s), and this obligation shall be assigned to and assumed by an approved transferee to which an acquired Real Property Interest(s) is transferred in accordance with Section 8.6.3, and by an instrument acceptable to the Air Force.

8.6.3. No provision of this Agreement shall preclude Eligible Entity from designating that another eligible entity hold the Real Property Interest acquired pursuant to this Agreement, or from subsequently transferring an acquired Real Property Interest any time after such acquisition to another eligible entity described in 10 U.S.C. § 2684a(b) (such as, state agencies, political subdivisions and private conservation organizations) for purposes of this Agreement. However, if Eligible Entity or another eligible entity so proposes to subsequently transfer that interest, it shall first notify the Air Force in which case the Air Force will have the following options:

8.6.3.1. Approve of the transfer subject to Eligible Entity's commitment to transfer the interest subject to the Air Force's rights under 10 U.S.C. § 2684a(d)(5) and recordation of the Real Property Interest(s); or

8.6.3.2. Exercise its rights under 10 U.S.C. § 2684(a)(d)(5) and the recorded Real Property Interest(s) and direct Eligible Entity to convey to the United States (through the Air Force) a Real Property Interest sufficient to ensure that the property is not used or developed for purposes inconsistent with the purposes of the Agreement; or

8.6.3.3. Direct Eligible Entity or other eligible entity to transfer to an eligible entity a Real Property Interest(s) sufficient to ensure that the property is not used or developed for purposes inconsistent with the Agreement to another entity or organization and ensures the recorded Real Property Interest(s) retains Air Force's right to demand transfer under 10 U.S.C. § 2684a(d)(5).

8.6.4. In the event the Secretary of the Air Force requires that Real Property Interest(s) be transferred to the United States, the eligible entity that holds the Real Property Interest(s) will do so and will be reimbursed for only costs incidental to the transfer (recording fees, certified copies, etc.).

8.6.5. Whenever the terms of this Agreement provide for coordination, concurrence, or approval by the Air Force, it will not be unreasonably withheld or conditioned. Any written request for approval will be considered and acted upon by the Air Force or its representative in a timely manner.

ARTICLE 9 – DISPOSITION OF PROPERTY

9.1. If a Real Property Interest acquired under this Agreement is no longer needed to meet the purposes and goals of the Eligible Entity (or approved transferee), prior to terminating or disposing of the Real Property Interest, the Eligible Entity (or approved transferee) shall obtain disposition instructions from the Air Force.

ARTICLE 10 – GENERAL PROVISIONS

10.1. Successors and Assigns. This Agreement may not be assigned by a party without the express written consent of the Parties. All covenants made under this Agreement shall bind and inure to the benefit of all successors and assigns of the Parties whether or not expressly assumed or acknowledged by such successors or assigns.

10.2. Execution. This Agreement is executed based upon a duly authorized representative of all the Parties signing this Agreement. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

10.3. Other Reports, Access, Retention and Examination of Records. In addition to financial or other reports required by this Agreement, the Air Force may require the Eligible Entity to prepare additional reports or provide additional information relating to this Agreement. The Eligible Entity agrees to deliver these reports or information within a reasonable time of request and with the detail reasonably required. Additionally, the Eligible Entity shall afford, with thirty (30) days written notice and during normal business hours (and subject to the Eligible Entity's standard security requirements), any authorized representative of the Air Force, OSD, or the Comptroller General access to, and the right to examine, all records, books, papers pertinent to this Agreement, including but not limited to financial records, statistical records, supporting documents, and all other documents and/or records or microfilm copies pertinent to this Agreement (the "Records"). Financial records, supporting documents, statistical records, and all other records or microfilm copies pertinent to this Agreement shall be retained for a period of three (3) years from the date of the Closing of the transaction using the funds.

10.4. Government Furnished Equipment. No Government Furnished Property, Equipment, and/or Material will be provided unless negotiated and specifically added to this Agreement.

10.5. Entire Agreement. This Agreement inclusive of all attachments constitutes the entire agreement between the parties concerning the scope and subject matter hereof and supersedes any prior understandings, negotiations, discussions, written or oral, relative to said scope and subject matter.

10.6. Agreement Administration/Amendments. Amendments or modifications to this Agreement shall follow these procedures: The party who wishes to amend this Agreement shall, upon reasonable notice of the proposed amendment to the other parties, confer in good faith with the other parties to determine the desirability of the proposed amendment. The Agreement can only be amended by the mutual consent of the Parties, and such amendments shall not be effective until a written amendment is signed by both Agreement signatories, or their authorized successors.

10.7. Waiver of Rights. Waiver of any requirement contained in this Agreement shall be by mutual agreement of the parties hereto. All waivers shall be reduced to writing and a copy of the waiver shall be provided to each party. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

10.8. Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections herein and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

10.9. Liability and Indemnity. Nothing in this Agreement shall be construed as an indemnification by one Party of the other for liabilities of a Party or third persons for property loss or damage or death or personal injury arising out of, or during the performance of, this Agreement, or arising from any other action that may arise as a result of this Agreement. Any claims or any liabilities, or claims for property loss or damage or for death or personal injury by a Party or its agents, employees, contractors, or assigns, or by third persons, arising out of, or during the performance of, this Agreement shall be determined according to applicable law.

10.10. National Policy Requirements and similar provisions. The Eligible Entity agrees that no person shall be denied benefits or otherwise be subjected to discrimination in connection with, performance under this Agreement, on the grounds of race, religion, color, national origin, sex, or handicap. By signing this Agreement, the Eligible Entity assures that it will comply with applicable provisions of the following National Policy Requirements:

10.10.1. Executive Order 11246, Employment discrimination and equal opportunity (41 CFR, part 60).

10.10.2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, et seq.), as implemented by DOD regulations at 32 CFR part 195.

10.10.3. Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

10.10.4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOD regulations at 32 CFR part 56.

10.10.5. Clean Air Act (42 U.S.C. § 7401, et. Seq.) and Clean Water Act (33 U.S.C. § 1251, et. seq.), as implemented by Executive Order 11783 [3 CFR, 1971-1075 Comp., p. 799] and Environmental Protection Agency rules at 33 C.F.R §§ 320-338, 40 C.F.R. §§ 100-135, 400-424, 425-503, as may be applicable.

10.10.6. National Environmental Policy Act (NEPA, at 42 U.S.C. § 4231, et. seq.). Before closing, the TPM will ensure the Air Force environmental impact analysis process (EIAP) pursuant to 32 CFR Part 989 is accomplished and, at minimum, reported on an Air Force Form 813 with the applicable categorical exclusion, as may be necessary, if no changes to the Real Property Interests are anticipated or intended by the Eligible Entity, and have such documentation reviewed by TPM's servicing legal advisor on such matters. The Eligible Entity agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the TPM provides written notification of compliance with the applicable environmental analysis process.

10.10.7. National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001, et. seq.).

10.10.8. Lobbying. The Eligible Entity agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

10.10.9. Officials Not To Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share any part of this Agreement or to any benefit arising from it, in accordance with 41 U.S.C. § 22.

10.10.10. Trafficking Victims Protection Act of 2000, as amended (TVPA) (22 U.S.C. § 7104(g)). Section 106(g) states: “any grant, contract or cooperative agreement provided or entered into by a federal department or agency under which funds are to be provided to a private entity, in whole or in part, shall include a condition which authorizes the department or agency, to terminate the grant, contract or cooperative agreement, without penalty, if the grantee or any sub-grantee, or the contractor or subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement.”

10.10.11. Certifications. By signing this Agreement, the Eligible Entity endorses that the following certifications have been provided: Appendix A to 32 CFR Part 25 regarding debarment, suspension, and other responsibility matters. The above certifications do not apply to transactions in Real Property Interest(s). They apply only to any other contracts written as a result of this Agreement, which are funded with federal funds obligated under this Agreement.

10.11. Notices. Any notice, transmittal, approval, request, authorization, designation, or other official communication required or desired under this Agreement shall be made in writing and shall be delivered by hand, or by recognized courier, or by the U.S. Postal Service to the other Party at the address and telephone number set forth in Attachment 2, or at another address that may be later designated by that Party.

For Eligible Entity

PIMA COUNTY ADMINISTRATOR'S OFFICE
C/O DIANA DURAZO
115 N. CHURCH AVE. STE. 231
TUCSON, AZ 85701

PIMA COUNTY REAL PROPERTY SERVICES
PUBLIC WORKS CENTER
C/O JEFFREY TEPLITSKY, DIRECTOR
201 N. STONE AVE. 6TH FLOOR
TUCSON, AZ 85701]

For the Air Force Center for Engineering

(FedEX or UPS)
AIR FORCE CIVIL ENGINEER CENTER
ATTENTION: AFCEC/CIUB MARY JETTE, PROJECT MANAGER
3515 SOUTH GENERAL MCMULLEN, STE 8009
SAN ANTONIO, TX 78226-1710

OR

(US Postal Service)
AIR FORCE CIVIL ENGINEER CENTER
ATTENTION: AFCEC/CIUB MARY JETTE, PROJECT MANAGER
MS MARY JETTE, PROJECT MANAGER
2261 HUGHES AVE, STE 155
SAN ANTONIO, TX 78236-9853

Air Force Local Representative:

ATTENTION: 355 CES/CENPL
MS. B. KACEY CARTER, INSTALLATION COMMUNITY PLANNER
3775 S. FIFTH STREET
DAVIS MONTHAN AFB, AZ 85707-9853
520-228-3291

ATTENTION: 355 CES/CEIA
MR. CHARLIE CYRE, RESOURCE ADVISOR
3775 S. FIFTH STREET
DAVIS MONTHAN AFB, AZ 85707-9853
520-228-3501

10.12. Conflict of Interest. The Eligible Entity shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others. This Agreement is subject to cancellation for conflict of interest under A.R.S. § 38-511, the pertinent provisions of which are incorporated by this reference.

ARTICLE 11 – TERM OF THE AGREEMENT, SUSPENSION, & TERMINATION

11.1. Term of the Agreement. The term of this Agreement shall commence upon the effective date of this Agreement and continue for five (5) years or sixty (60) months, or upon the cancellation of funds obligated herein, including funds obligated pursuant to amendments to this Agreement, or upon mutual agreement as to the completion of the purposes for which this Agreement was made. However, the following provisions shall survive expiration or earlier termination of this Agreement: Sections 5.4.2, 5.4.2.3, 7.1, 7.3.1, 7.3.3, 7.5, 8.4.6, 8.6.3, 8.6.4, 10.1, 10.3, 10.9., and Article 9.

11.1.1. Either party, upon one hundred eighty (180) days notice to the other signatories to this Agreement, may terminate this Agreement. As of the date of termination all funds, provided by the Air Force and not expended, shall be returned to the Air Force as provided by applicable law. Notwithstanding any other provision in this Agreement and in accordance with A.R.S. § 42-17106(A), this Agreement may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement.

11.1.2. This Agreement can be extended if amended (see Sections 4.1, 6.2, 8.4.7, and 10.6).

11.2. Amendments. This Agreement can be amended by the mutual consent of the Parties. All amendments shall be executed in writing and signed bilaterally by each party to this Agreement.

11.3. Change of Circumstances. Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this Agreement.

11.4. Force Majeure. Neither party shall be in breach of this Agreement for a failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform shall promptly notify the other party and shall in good faith maintain such partial performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

ELIGIBLE ENTITY
PIMA COUNTY

SHARON BRONSON
Chair, Pima County Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board

Intergovernmental Agreement Determination

The undersigned Deputy County Attorney reviewed this Intergovernmental Agreement between Pima County and the Air Force and determined that it is in proper form and is within the powers and authority granted to Pima County under the laws of the State of Arizona.

PIMA COUNTY:

Bobby Yu

Deputy County Attorney

“AIR FORCE”

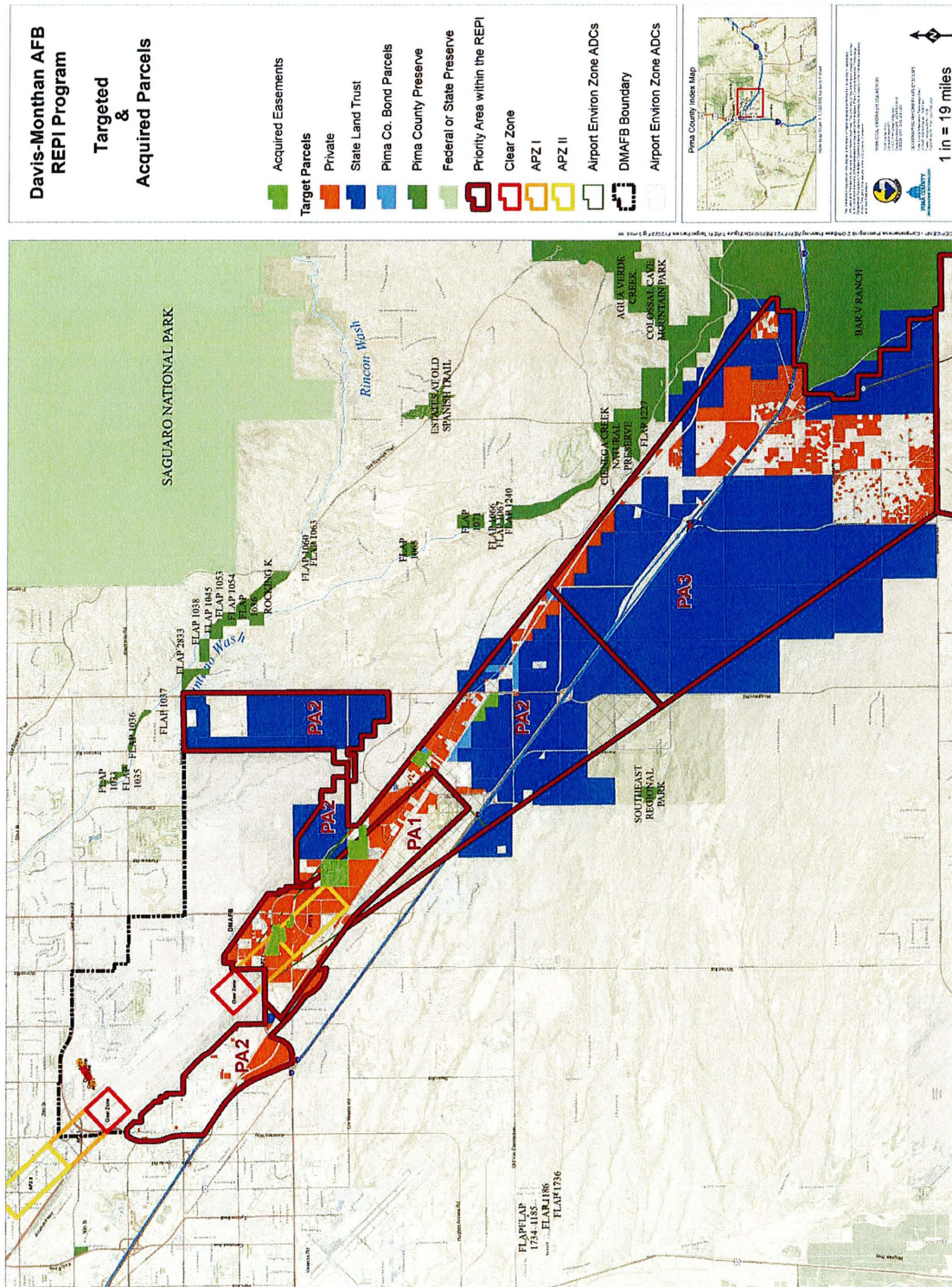
THE UNITED STATES OF AMERICA, acting
by and through the **SECRETARY OF THE AIR
FORCE**

By: _____
JEFFREY P. DOMM, SES
Director, Installations Directorate

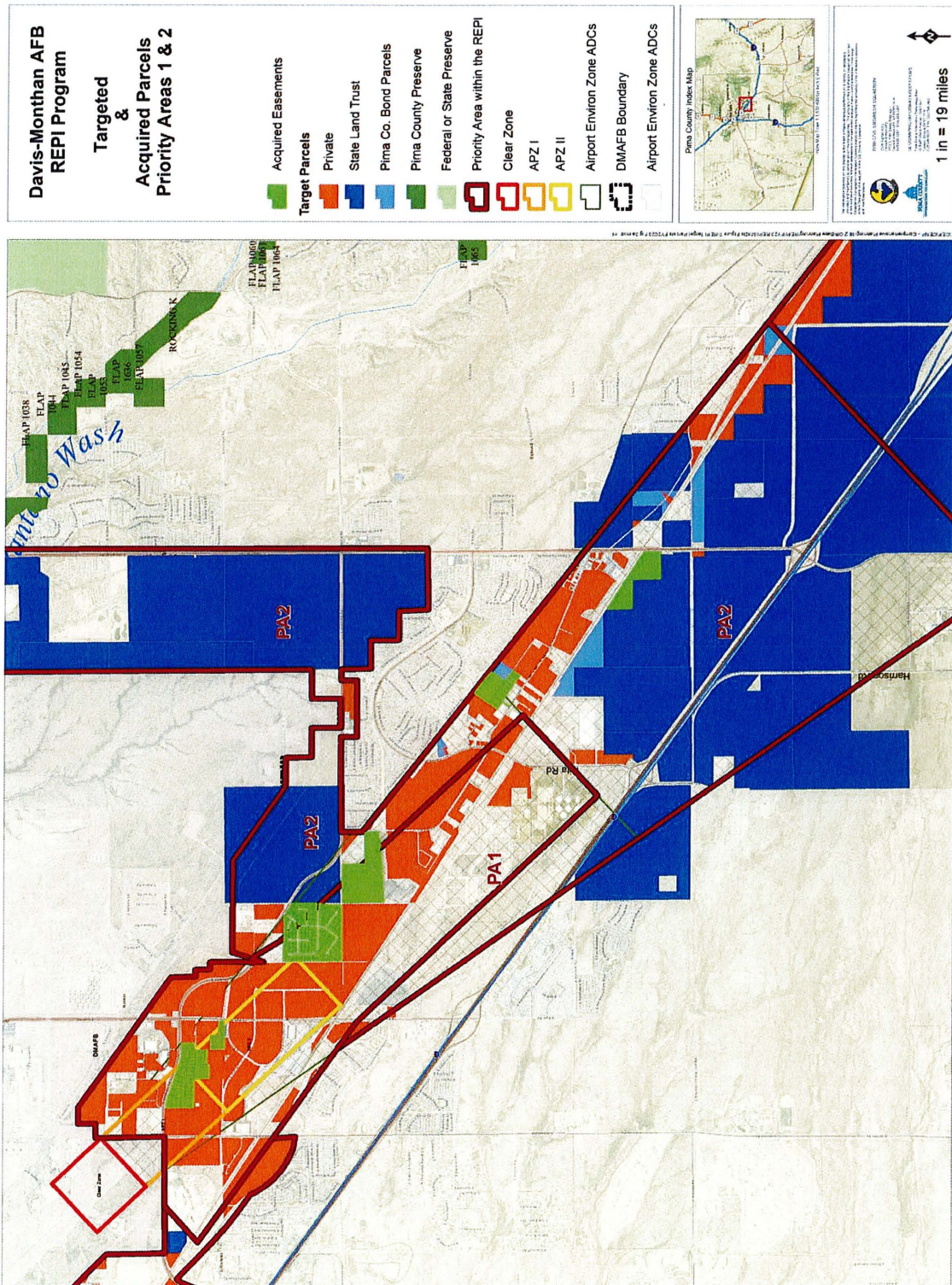
Date: _____

ATTACHMENT 1 – MAPS

PROJECT AREA OF INTEREST



ATTACHMENT 1 – MAPS **PROJECT AREA OF INTEREST CONTINUED**



ATTACHMENT 2 – PROGRAM MANAGEMENT

Eligible Entity Program Manager (EPPM): Diana Durazo, Special Projects Manager, Pima County Administrator's Office, 115 N. Church Ave. Ste. 231, Tucson, AZ 85701, : Diana.Durazo@pima.gov; (520) 724-8801

Installation Resource Advisor/Funds Manager: [Charlie Cyre, Resource Advisor, 355 CES/CEIA, 3775 S. Fifth St, Davis-Monthan AFB, AZ, 520-228-3501, chalarmchon.cyre@us.af.mil

Project Manager (PM): Mary Jette, Project Manager, AFCEC/CIUB, 2261 Hughes Ave., Suite 155, JBSA Lackland, TX 78236; Mary.Jette.1@us.af.mil (210-722-7048

Technical Project Manager (TPM): Kacey Carter, Base Community Planner, 355 CES/CENPP, 3775 S. Fifth St., Building 4210, Davis Monthan AFB, AZ 85707

ATTACHMENT 3 – BASIC FORM OF NOTICE TO PROCEED
Phase I, Planning and Due Diligence

This action is in accordance with paragraph _____ of the Cooperative Agreement or Encroachment Management Agreement dated _____. Funds should be requested prior to any expenditures for which Air Force funding will be used. Reimbursement, while not best method of providing funding, may, under exceptional circumstances be requested in accordance with the terms of the Encroachment Management Agreement. Air Force resource management will not reimburse anything not listed on an NTP.

(Partner Name), this notice to proceed authorizes you to proceed with due diligence on:
List Parcel Name(s)

Good Faith Estimated Costs: Listed by each part of due diligence

| Due diligence | Total Cost | Partner Share | AF Share |
|--|------------|---------------|----------|
| | | | |
| Appraisal | | | |
| Land surveys | | | |
| Environmental surveys/assessments | | | |
| Title searches | | | |
| Title insurance | | | |
| Escrow agent fees and expenses | | | |
| Real estate agent fees | | | |
| Recording fees | | | |
| Water rights research | | | |
| Other settlement statement items not listed here and that are normally paid by buyer | | | |
| Legal fees | | | |
| Fees for other professional services | | | |
| It does not include: any costs for activities for which either party already incurs in their regular course of business (e.g. employee salaries, rents, professional licenses, rent for offices, supplies, etc.) | | | |
| | | | |
| Total | | | |

Point of contact for additional information is the undersigned Base POC at telephone (XXX) XXX-XXXX.

Technical Project Manager (Base POC):

AFCEC Project Manager:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

ATTACHMENT 4 – BASIC FORM OF NOTICE TO PROCEED
Phase II, Acquisition

This action is in accordance with paragraph _____ of the Cooperative Agreement or Encroachment Management Agreement dated _____. Funds should be requested prior to any expenditures for which Air Force funding will be used. Reimbursement, while not best method of providing funding, may, under exceptional circumstances, be requested in accordance with the terms of the Encroachment Management Agreement. Air Force resource management will not reimburse anything not listed on an NTP.

(Partner Name), this notice to proceed authorizes (Partner Name) to proceed with closing on:
List Parcel Name(s)

All due diligence has been reviewed and approved by AFCEC and SAF/GCN including: draft easement, draft title commitment, environmental baseline, AF Form 813, and estimated closing costs.

List or attach Good faith estimate of closing costs:

| Closing | Total Cost | Partner Share | AF Share |
|--|-------------------|----------------------|-----------------|
| Easement | | | |
| Easement Monitoring/Natural Resources Management, Monitoring, and Enforcement ("Lump Sum Payment") | | | |
| Title policy premium | | | |
| Escrow fees | | | |
| Recording fees | | | |
| Closing costs not covered in a Phase I NTP | | | |
| | | | |
| Total | | | |

Point of contact for additional information is the undersigned Base POC at telephone (XXX) XXX-XXXX.

Technical Project Manager (Base POC):

AFCEC Project Manager:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____