

Department of the Army
Corps of Engineers
HTRW Center of Expertise
12565 W. Center Road
Omaha, Nebraska 68144

Tar Creek Demolition Assistance Grant

This Grant is made pursuant to authority established in the Energy and Water Development Appropriations Act of 2004, Public Law 108-137, Section 111(b), for financial assistance to the State of Oklahoma to assist in the remedy of adverse environmental and human health impacts in Ottawa County, Oklahoma. The parties to this agreement are US Army Corps of Engineers (USACE) on behalf of the United States and Oklahoma Department of Environmental Quality (DEQ) on behalf of the State of Oklahoma. The Oklahoma DEQ is also referred to as the "Recipient" to this agreement.

1. **GRANT TITLE:** "Tar Creek Demolition Assistance Grant"
2. **GRANT NUMBER:** W912BV-07-W-0001
3. **RECIPIENT CONTACT NAME AND ADDRESS:** All communications to the Recipient in connection with this agreement shall be addressed to the following point of contact:

Program and Technical POC:

Oklahoma Department of Environmental Quality
Attn: Angela Brunsman, Environmental Program Manager
Land Protection Division
707 North Robinson, P. O. Box 1677
Oklahoma City, Oklahoma 73101-1677
e-mail: Angela.Brunsmann@DEQ.state.ok.us
phone: 405-702-5141
fax: 405-702-5101

Financial POC:

Oklahoma Department of Environmental Quality
Attn: Linda Dyson, Accountant
Administrative Services
707 North Robinson, P. O. Box 1677
Oklahoma City, Oklahoma 73101-1677
e-mail: Linda.Dyson@DEQ.state.ok.us
phone: 405-702-7116
fax: 405-702-7101

Tax ID No: 73-6017987
DUNS No: 04-445-070J

4. **PAYMENT METHOD:** Reimbursement from DoD to the Recipient shall be made by means of electronic funds transfers. The Recipient shall provide their payment “routing” number to the USACE financial manager. The USACE financial manager will ensure this information is provided to the Government paying office and ensure that the electronic payment procedures are properly established. The payment office and the Recipient only shall maintain Recipient’s routing numbers.

5. **SCOPE OF WORK:** The work to be accomplished under this agreement consists of the services identified below:
 - a. The Oklahoma Department of Environmental Quality (DEQ), in coordination with the Lead Impacted Communities Relocation Assistance Trust will provide for the demolition and disposal of houses, businesses, and public use structures and, when appropriate, utility and road relocation associated with demolition. This work may be conducted in areas related to the Tar Creek Superfund Site, Relocation Assistance Zone, in and near the towns of Picher, Cardin, and Hockerville, in Ottawa County, Oklahoma.

 - b. Structures will be demolished to decrease the health risks and liability associated with homes, businesses, and public facilities in the area. Best management practices will be employed during demolition to protect the surrounding environment and remaining citizens in the area. All structures will be inspected and mitigated where necessary for lead based paint and asbestos prior to demolition. Demolition activities may include: removal and disposal of all construction and demolition debris, septic systems closure, utilities relocation, grading of site to allow for appropriate drainage, and final restoration of disturbed area.

 - c. During the demolition phase of the project:
 - (1) Best Management Practices will be followed to ensure that any activity taken in close proximity to waters of the United States will be protected from incidental pollution from demolition debris or runoff.
 - (2) Demolition debris will be disposed of in a manner consistent with State of Oklahoma and all applicable Federal laws and regulations.
 - (3) Debris will go to a licensed sanitary landfill and copies of disposal facility receipts will be prepared and retained by the recipient to document proper disposal.
 - (4) No road relocations will occur that span streams in the area.

- d. Other activities associated with this project include project administration, environmental assessment of structures prior to disposition, contractor oversight, and agency reporting requirements. In addition, activities necessary for compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other applicable laws may be conducted in association with the above stated elements of the work.
6. **SITES COVERED BY THIS GRANT:** This Grant shall apply to the demolition projects at the areas stated in the scope of work. Any changes to the scope of work may only be accomplished through bilateral modification to this Grant.
7. **RESPONSIBILITIES OF RECIPIENT:**
- a. The Recipient and not the USACE or the United States shall be responsible for obtaining any necessary licenses and/or permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Recipient shall also be responsible for all damage to persons or property that occurs as a result of the Recipient's fault or negligence.
 - b. The Recipient shall be responsible for making all determinations regarding the proper management, storage, treatment, or disposal of all waste and other materials associated with the work included in this Grant. The USACE and the United States shall not make any decisions or exercise any control over areas where the work is performed or the waste or other materials involved in the execution of the Grant work, and shall not be considered to be an operator, arranger, or generator with regard to any of the materials or work related to this Grant or the areas where the work is performed.
 - c. The USACE and the United States shall not be a party to or exercise control over any subgrant, contract or subcontract awarded by the Recipient in the course of performance of the work under this Grant. The Recipient shall follow competitive procurement procedures for work performed under this Grant to the same extent as it uses for procurements using non-Federal funds. Subgrantees shall utilize competitive procedures which, at a minimum, satisfy the requirements of the DoD Grant and Agreement Regulations System (DoDGARS) §33.36.
 - d. The Recipient shall be responsible for all communications with the public, local officials, Tribes, members and organizations of the affected communities, and individuals, businesses or public entities whose property is affected by the performance of the work under this Grant. The Recipient shall complete all necessary agreements and/or exercise any appropriate and lawful authority necessary to the completion of the work under this Grant, including acquisition of real estate interests and any other arrangements necessary to the completion of the work. The USACE and the United States shall not exercise any governmental authority to take

property or require access or otherwise establish lawful authority to complete the work, except for the functions agreed to in the provisions of this Grant agreement.

- e. The Recipient shall hold and save the USACE and the United States harmless and free from all damages arising from the performance of the work under this Grant, except for damages due to the fault or negligence of the USACE or its contractors. The Recipient shall indemnify the USACE and the United States for any liability that may be imposed under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq., as amended (CERCLA) as a result of the performance of work under this Grant.
- f. The Recipient and not the USACE or the United States shall be responsible for any necessary operation, maintenance, repair, replacement and rehabilitation associated with the performance of the work under this Grant, except that Grant funds may be used by the Recipient for the completion of the work described in the scope of services in paragraph 5, above, within the limits of the terms of this Grant agreement.

8. PERFORMANCE PERIOD: This Grant shall apply to services provided by the Recipient and its agents, contractors, subcontractors, sub-recipients and employees during the period beginning July 1, 2007 and ending June 30, 2009, subject to the availability of funds. The Grants Officer may extend the performance period by an optional one (1) year period, up to two (2) times, for a total of two option years and a maximum grant performance period of four years from the beginning date of the grant performance period. This Grant cannot exceed a four (4) year performance period. Options may only be exercised through a unilateral modification to this Grant issued by the Grants Officer in writing at any time before the expiration of the Grant performance period as stated in this section or as extended by previous exercise of an option.

9. AWARD AMOUNT: The ceiling amount that may be reimbursed under this grant is \$3,500,000 for the entire performance period of the grant plus any option years. Award amounts are shown in the table at Attachment A consisting of the recipient's Application for Federal Assistance dated April 13, 2007, attached hereto and made a part hereof. DoD agrees to reimburse the Recipient for the actual costs incurred by the recipient for eligible services which the Recipient, its agents, contractors, subcontractors, sub-recipients and/or employees may perform during the performance period and in connection with the sites described in the scope of work for this Grant, subject to the terms and conditions of this Grant and not exceeding the award amount specified in this section. The Recipient may request additional funds for services provided under this agreement, such as an increase in the award amounts specified in this section, in accordance with the procedure set forth in section 15 below.

10. POINTS OF CONTACT:

a. United States Grants Officer:

Mr. Douglas E. Hadley
USACE HTRW Center of Expertise
CENWO-HX
12565 W. Center Road
Omaha, Nebraska 68144

Telephone: (402) 697-2441
Facsimile: (402) 697-2613
E-mail: Doug.E.Hadley@usace.army.mil

b. Program Representative:

Mr. Ken Gregg
Headquarters, U. S. Army Corps of Engineers
Attn. CEMP
441 G Street NW
Washington, DC 20314-1000

Telephone: (202) 761-5530
E-mail: ken.l.gregg@usace.army.mil

c. Financial Representative (for issues related to reimbursements to the Recipient):

Ms. Debra White
U. S. Army Corps of Engineers
Attn: CESWT-PP-C
Tulsa District, U.S. Army Corps of Engineers
1645 S. 101st East Ave
Tulsa, Oklahoma 74128-4609

Telephone: 918-669-7216
Facsimile: 918-669-7206
E-mail: Debra.K.White@usace.army.mil

d. Technical POC:

Ms. Jonna Polk
U. S. Army Corps of Engineers
CESWT-PP-PM
Tulsa District, U.S. Army Corps of Engineers
1645 S. 101st East Ave
Tulsa, Oklahoma 74128-4609

Telephone: 918-669-7482
Facsimile: 918-669-7235
E-mail: jonna.polk@usace.army.mil

- 11. REPORTING REQUIREMENTS:** Recipient shall provide financial reports and performance reports to the Grants Officer. These reporting requirements are specified in 32 CFR § 33.40 and 32 CFR § 33.41.
- 12. PAYMENTS:** Recipient shall submit electronic payment vouchers to the Federal Government no less frequently than once every three months and no more frequently than once per month. Payments will be authorized by the Grants Officer for services eligible under this Grant and in compliance with the requirements of applicable laws and regulations. The Recipient shall send electronic payment requests to the U.S. Army Corps of Engineers Financial Representative identified in section 10.c. above. Payments will be disbursed by:

U.S. Army Corps of Engineers Finance Center
Attn: CEFC-AO-P
5722 Integrity Drive
Millington, TN 38054-5005

- 13. RECORDS:** The Recipient shall retain supporting documents for all costs billed under this Grant. Upon request of the Grants Officer, the Recipient shall provide access to or copies of all supporting documents and records associated with costs billed or payments made under this Grant. The Recipient shall retain all the supporting documents for a period no less than that required by the DoDGARS §32 CFR 33.42. In general, this is a period of three years after the last expenditure report at the completion of the Grant, except as otherwise provided in the DoDGARS.

Whenever deemed necessary, the USACE, Federal auditing agencies, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, computer records, or other records of the Recipient and its subgrantees and contractors, in order to make audits, examinations, excerpts, and transcripts, and for any other lawful purpose.

- 14. CERTIFICATIONS AND REPRESENTATIONS:** Certifications and Representations, contained within the Grant application dated April 13, 2007, and included in Attachment A, are hereby incorporated into and made a part of this Grant.
- 15. FUNDING:** Notwithstanding the Recipient's application and budget information, the Federal Government is not obligated under this Grant to

reimburse the Recipient for costs incurred in excess of the Award Amounts specified in section 9, above.

- a. No notice, communication, or representation in any form or from any person other than the Grants Officer shall affect the award amounts, and therefore the cost of this Grant to the Federal Government. The Grants Officer shall provide any notice, communication or representation affecting the award amounts in writing signed by the Grants Officer.
- b. The Recipient is not obligated to continue performance under this Grant (including actions under the Termination Clause of this Grant) or otherwise incur costs in excess of the amounts specified in section 9.
- c. In accordance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments", if the award amount specified in section 9 is increased, any eligible cost the Recipient incurred before the increase that is in excess of the previous award amounts, may be allowable to the same extent as if incurred afterward, at the sole discretion of the Grants Officer, unless the Grants Officer issues a termination or other notice directing that the increase is solely to cover other specified expenses.

16. CLAIMS AND APPEALS: If the Recipient wishes to submit a claim to the Grants Officer, the provisions of DoDGARS §22.815 shall govern the process of submission and decision on the claim. If the Recipient wishes to appeal a final decision of the Grants Officer issued under this section, it may submit an appeal to the Army Grant Appeal Authority within 90 calendar days after the date of receipt of the Grants Officer decision by filing a notice of appeal. The provisions of DoDGARS §22.815(e) shall govern, along with any rules established by the Army Grants Appeal Authority.

17. TERMINATION AND DISPUTE RESOLUTION:

- a. **Material Failure to Comply and Termination for Convenience.** The Grants Officer may unilaterally take action to remedy a material failure to comply with the terms of the Grant, including, but not limited to, temporarily withholding cash payments, disallowing all or part of the costs related to the activity or action not in compliance, wholly or partially suspending or terminating the Grant, and/or withholding further awards, pursuant to the provisions of 32 CFR § 33.43 and applicable federal law or by either party under termination for convenience pursuant to the provisions of 32 CFR § 33.44.
- b. **Termination at the request of the recipient.** The recipient may request termination of this Grant by providing written notice by an authorized official of the recipient providing no less than ninety (90) days notice before the effective date of the termination requested by the recipient.

Upon submitting notice of a termination, the recipient shall immediately cease to incur costs for reimbursement under this Grant, and shall seek to minimize the financial impacts of the termination for its convenience. The recipient shall submit to the Grants Officer a final accounting of costs to be requested under the grant, including all termination costs, not later than ninety (90) days after the date of the notice of termination. The Grants Officer may then deobligate funds in excess of the total amount requested by the recipient, at his discretion and within normal Federal fiscal and accounting rules. This does not require the Grants Officer to reimburse amounts beyond those found to be eligible, allowable, allocable and reasonable, and otherwise consistent with applicable Federal law, regulations and guidance, or in excess of the amount stated in section 9, above.

- c. **Dispute Resolution:** The State and Federal Government agree to resolve any disagreements between them in accordance with the terms described in Attachment B.

18. INCORPORATED CIRCULARS AND REGULATIONS: This agreement incorporates by reference all terms, conditions and provisions, not otherwise excepted herein, of OMB Circulars A-87, A-102, and A-133, and the applicable provisions of the DoD Grant and Agreement Regulations System (DoDGARS), including 32 CFR Part 33.

OMB Circulars may be obtained from:
<http://www.whitehouse.gov/omb/circulars/index.html>

The DoDGARS, including 32 CFR Part 33, may be obtained from:
<http://www.dtic.mil/whs/directives/corres/html/32106r.htm>

19. MODIFICATIONS:

- a. **Bilateral Modifications.** Bilateral Modifications to this Grant may be issued by the Grants Officer for any changes to the Scope of Work, any decrease in the funds specified in section 9 or increase in funds specified in section 9, any increase or decrease in the scope of work, , and any termination for convenience of the United States of the subject Grant. Bilateral modifications require the signatures of an authorized representative of the Recipient and the Grants Officer.
- b. **Unilateral Modifications.** The Federal Government may exercise an option to extend the term of the Grant (reference section 8) and/or implement administrative changes to this Grant as unilateral modifications. For the purposes of this agreement, administrative changes include any changes in the Grants Officer, points of contact specified for the Federal Government or Recipient, changes in addresses, phone numbers, email addresses, and corrections of obvious typographical or

calculation errors. Unilateral modifications require the signature of the Grants Officer only.

- 20. CLOSE OUT:** This Grant shall be closed out at the end of the period stated in section 8 in accordance with 32 CFR § 33.50.
- 21. FOLLOW-ON GRANTS:** In the event that the Tar Creek assistance program is the subject of further authorizing legislation that is passed into law, either to increase the funding authority of this program or to expand the type of work for which Federal financial assistance may be provided, and the Recipient seeks to enter an additional grant, the Recipient shall prepare and submit an application for a new grant, as stated in OMB Circulars and the DoDGARS. The Recipient must submit the application to the Federal Government no less than six months before it seeks to have the new grant in place. The Federal Government is under no obligation to enter into any additional Grant, and no Grant may be issued unless appropriated funds are available to fund any additional work.
- 22. STATE'S RESERVATION OF RIGHTS:** Notwithstanding any other provision of this agreement, the Recipient shall retain any statutory right it may have to recover costs incurred in association with providing the services described in this Grant or otherwise not reimbursed under this agreement. This section does not create any right to present any claims under this Grant beyond those otherwise allowed under the terms of the Grant and the DoDGARS.
- 23. STATUTORY AUTHORITY.** This Grant is entered into pursuant to and is subject to the requirements and limitations of Public Law 108-137, Section 111(b), and all other requirements and limitations arising under applicable Federal law.

ON BEHALF OF THE STATE OF OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY:



DAVID R. DYKE
DIRECTOR, ADMINISTRATIVE SERVICES
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE: 5-23-07

ON BEHALF OF THE UNITED STATES OF AMERICA:

Douglas E. Hadley
DOUGLAS E. HADLEY
GRANTS OFFICER

DATE: *12 June 2007*
