

CONTRACT	
NO.	<u>11-51-B-138887-1106</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**AGREEMENT
BETWEEN PIMA COUNTY
AND
BRUSH CERAMIC PRODUCTS
FOR
AIR QUALITY MONITORING**

This agreement (“Agreement”) is entered into by and between Pima County, a body politic and corporate (“County”), and Brush Ceramic Products, Inc. (“Brush”) to establish and maintain Air Quality Monitoring stations and to share the data generated by these stations.

AGREEMENT

SECTION 1. PURPOSE

The purpose of this Agreement is to set forth the responsibilities of the parties and to provide for Brush’s contribution of funds to the County for access to the data generated by the monitoring program.

SECTION 2. MONITORING SITES; ACCESS TO DATA

Pursuant to Attachments A and B, each of which is incorporated into this Agreement by this reference, the County, through the Pima County Department of Environmental Quality (“PDEQ”), shall establish a program to measure beryllium levels in the ambient air. The scope of the program, the number of monitoring sites, the number of collected samples, and the location of the monitoring sites shall be determined under the terms of this Agreement. The collected data shall not be used by the County to determine Brush’s compliance with any permit issued by County.

SECTION 3. COMMITMENT OF FUNDS

Within thirty days of effectiveness of this Agreement, Brush shall pay Pima County \$40,000.00. For each of the following four years Brush shall pay Pima County \$10,000.00 per year. The annual payment shall be made by Brush within 30 days after the annual data review meeting provided for in Attachment B.

SECTION 4. TITLE AND MAINTENANCE

PDEQ shall establish the monitoring sites with equipment owned or operated by the County. During the term of this Agreement and upon its expiration, Brush shall not be vested with title to the equipment and shall not be responsible for any continued operation and maintenance of the equipment.

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

SECTION 5. NO JOINT VENTURE; NO THIRD PARTY BENEFICIARIES

It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employer-employee relationship between County and Brush. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of any other party as a result of this Agreement, including (without limitation) any party's obligation to withhold Social Security and income taxes for itself or its employees. This Agreement shall not create any right to any person or entity as a third party beneficiary.

SECTION 6. COMPLIANCE WITH LAWS

The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court.

- 6.1. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.
- 6.2. *Americans with Disabilities Act.* This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. § 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

SECTION 7. FORCE MAJEURE

A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to floods, earthquakes, acts of God, or orders of any regulatory government officer or court (excluding orders promulgated by the parties themselves), which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

SECTION 8. WAIVER

Waiver by any party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement.

SECTION 9. TERM; EXTENSIONS; TERMINATION

- 9.1. *Term.* This Agreement is effective for a period of 5 years as provided in this Agreement and under the terms of Attachment B.

- 9.2. *Termination.*
 - a. A.R.S. § 38-511. This Agreement is subject to the provisions of A.R.S. § 38-511.

 - b. Non-appropriation. It is acknowledged that, notwithstanding any other provision contained herein, this Agreement may be terminated if for any reason the County fails to appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, County shall have no further obligation to Brush other than for payment for services rendered prior to such termination. If the Agreement is terminated, Brush shall also have no further obligation to the County.

 - c. This Agreement may be terminated by either party at any time and without cause by serving upon the other party thirty (30) days advance written notice of such intent to terminate.

SECTION 10. INSURANCE

Brush acknowledges that the County is self-insured for the full amount of its liability under this Agreement.

SECTION 11. BOOKS AND RECORDS

County shall keep and maintain proper and complete books, records and accounts, which shall be open for inspection and audit by duly authorized representatives of any other party at all reasonable times. All drawings, records, documentation and correspondence shall be the property of the County following the termination of this Agreement, except copies maintained by Brush for its records. Brush acknowledges that the County is a public agency and as such is responsible for complying with Arizona’s Public Records Law.

SECTION 12. SEVERABILITY

In the event that any provision of the Agreement or the application thereof is held invalid, such invalidity shall have no effect on other provisions and their application which can be given effect without the invalid provision, or application, and to this extent the provisions of this Agreement are severable.

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

SECTION 13. NOTIFICATION

All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Pima County
Department of Environmental Quality
Ursula Kramer, Director
150 W. Congress, 1st Floor
Tucson, AZ 85701

Brush Ceramic Products, Inc.
6100 South Tucson Boulevard
Tucson Arizona 85706

SECTION 14. ENTIRE AGREEMENT; MODIFICATION

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement on the date written below.

PIMA COUNTY

L. H. Wisniewski

Procurement Director

Date: NOV 07 2006

BRUSH CERAMIC PRODUCTS, Inc.

[Signature] 11/6/06
Authorized Officer Signature

John E. Scheutzle General
Printed Name and Title Manager

APPROVED AS TO CONTENT

Ursula Kramer
Department Head

APPROVED AS TO FORM

[Signature] 10/31/06
Deputy County Attorney

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

Attachment A
Pima County Department of Environmental Quality Conditions
For
Proposed Beryllium Monitoring Strategy

Purpose of Monitoring

Pima County Department of Environmental Quality (PDEQ) shall establish an air quality monitoring network to measure beryllium levels in the ambient air. The data collected from the network will allow PDEQ to provide valuable information to share with interested parties including the public, health officials, the Sunnyside Unified School District and elected officials. This information will support the air quality permitting efforts of PDEQ by providing PDEQ with data on the effectiveness of the permit that will be issued to Brush Ceramic Products, Inc.. While the data will not be able to determine the origin of any detected beryllium, it will be useful in determining trends or changes in beryllium levels in the ambient air.

Scope of Monitoring

PDEQ will establish and maintain six monitoring sites within the Sunnyside Unified School District (SUSD) for a period of five years. The four monitoring locations that are currently operated by SUSD will continue to be operated. PDEQ will also establish two additional locations that will also be located on SUSD property. The proposed locations are:

- Site 1 – SUSD Transportation Building (existing SUSD monitoring site)
- Site 2 – Los Ninos Elementary School (existing SUSD monitoring site)
- Site 3 – Los Amigos Elementary School (existing SUSD monitoring site)
- Site 4 – Ocotillo Elementary School (existing SUSD monitoring site; proposed co-location site)
- Site 5 – Sunnyside High School (new monitoring site)
- Site 6 – Chaparral Middle School or Desert View High School (new monitoring site)

Monitoring Plan

PDEQ will develop a detailed monitoring plan that will specify the monitoring methods to be used, the number and type of samples to be collected, a background monitor location and background sampling approach, and a Quality Assurance/Quality Control (QA/QC) plan. The monitoring conducted at all sites will be in conformance with EPA standards found in 40 CFR 58, Appendix A. There will be six monitoring locations with one location being a co-location site (Ocotillo Elementary School). PDEQ will install three new monitors (one at each new site and a monitor at the co-location site), in addition to the four owned by SUSD. All the monitors will be upgraded to use brushless

motors to eliminate lost samples and decrease required maintenance.

The operation schedule for the monitors will be set so that one monitor is running at all times during the five year project period. This means there will be no days when a sample is not taken. This will produce a total of 438 samples a year including 12 blanks.

SUSD will participate in the project by assisting in the operation of the monitors, collecting sample filters, and notifying PDEQ of technical or mechanical problems at the sites. PDEQ will perform quarterly audits and calibrations as well as weigh, process and send the samples to the lab for analysis. PDEQ will conduct QA/QC review of all data collected, summarize the data, and make it available to the public on the PDEQ webpage.

Attachment B
Brush Ceramic Products (BCP) Conditions
For
Proposed Beryllium Monitoring Strategy

Brush Ceramic Products, Inc. (“Brush”) commits to voluntarily participate in an ambient air monitoring program in cooperation with the Pima County Department of Environmental Quality (PDEQ) with the following conditions:

1. At any time during the life of this agreement, Brush retains the right to install a co-located air monitoring station subject to agreement with the property owner.
2. Additional sampling or data gathering regarding beryllium undertaken under this agreement shall not be done without the agreement of both parties.
3. Brush shall be provided all sample results, calibration information, and share the rights to such data with Pima County. Testing results, analysis, and conclusions drawn from the data shall be released to Brush prior to any public dissemination.
4. There shall be, at a minimum, an Annual Data Review meeting 30 days prior to the anniversary date of the permit to discuss the results of the sampling and ongoing program.
5. Brush has agreed to pay a total of \$80,000. Payment will be made according to the following schedule and begins upon issuance of the permit:
 - Start of agreement - \$40,000
 - Annual payments of \$10,000 shall be made within 30 days following the Annual Data Review meeting between Brush and PDEQ.
 - Payments under this schedule are the limit of Brush’s liability.
6. Air sample results shall not be used to determine air permit compliance.
7. The term of this agreement shall be for five (5) years and begins upon issuance of the permit. This agreement concludes at the end of year five (5) with no further liabilities on either party.
8. This agreement may be terminated by either party upon providing 30 days advance written notice by certified mail to the other party.