

COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603
Phone: (520) 432-8392 Fax: (520) 432-8397
Website: www.cochise.az.gov

Professional Services Agreement BDI Airport Water Improvement Project Waterline Design Services Agreement No. 15-34-FAC-03

THIS AGREEMENT is made and entered into this _____ day of June, 2015 by and between **Cochise County**, hereinafter referred to as the COUNTY, and **Brown and Caldwell, Inc.** hereinafter referred to as the CONSULTANT.

I. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this agreement, Consultant shall provide the services in accordance with **Exhibit "A" Scope of Services/Fee Schedule**.

II. COMPENSATION AND METHOD OF PAYMENT

In consideration of the performance of the services described in **Exhibit "A" Scope of Services/Fee Schedule**, the County shall pay the Consultant a not to exceed Contract Engineering Fee of One Hundred and Nine Thousand Eight Hundred and Eighty Seven dollars (\$109,887).

The County will pay the Consultant following the submission of itemized invoices(s) for the services rendered. No payment shall be issued prior to receipt of material or service and correct invoice. Each invoice must bear written certification by an authorized County representative confirming the services for which payment is requested have been performed. County agrees to pay all properly documented invoices, for accepted work within thirty (30) days of receipt.

All notices, invoices and payment shall be made in writing and may be given by personal delivery or by mail.

The designated recipients for such notices, invoices and payments are as follows:

Consultant:	Brown and Caldwell, Inc. 333 East Wetmore Road, Suite 165 Tucson, Arizona 85705 Attn: Mark Poppe, PE 520-918-2314
County:	Cochise County Facilities Management Department 1415 Melody Lane, Bldg "C" Bisbee, AZ 85603 Attn: Terry Rutan 520-432-8392

III. CONTRACT DURATION

The Consultant shall not commence any billable work or provide any material or services under this Agreement until Consultant receives a Notice to Proceed, or is otherwise directed to do so in writing by the County Procurement Director or his designee. The Consultant shall complete all work to the satisfaction of the County in accordance with the Scope of Services.

This agreement shall be in effect through June, 2016 unless extended in writing by contract amendment.

IV. TERMINATION

- A. The County may cancel this Agreement without penalty or further obligation pursuant to A.R.S. §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the County is or becomes, at any time while the Agreement or any extension of the Agreement is in effect any employee of, or Consultant to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the County is received by the parties to this Agreement, unless the notice specifies a later time.
- B. This Agreement may also be terminated at any time by mutual written consent, or by the County, with or without cause, upon giving the thirty (30) days written notice to the Consultant. The County at its convenience, by written notice, may terminate this Agreement, in whole or in part. If this Agreement is terminated, the County shall be liable only for payment under the payment provisions of this Agreement for services rendered and accepted material received by the County before the effective date of termination.
- C. The County reserves the right to cancel the whole or any part of this Agreement due to failure of the Consultant to carry out any term, promise or condition of the Agreement. The County will issue a written ten (10) day notice of default to the Consultant for acting or failing to act any of the following, in the opinion of the County:
 - 1. Consultant provides personnel who do not meet the requirements of the Agreement;
 - 2. Consultant fails to adequately perform the stipulations, conditions, or services/specifications required in the Agreement;
 - 3. Consultant attempts to impose on the County personnel, materials, products, or workmanship that is not of an acceptable quality;
 - 4. Consultant fails to furnish the required service and/or product within the time stipulated in the Agreement;
 - 5. Consultant fails to make progress in the performance of the requirements of the Agreement and/or gives the County a positive indication that consultant will not or cannot perform to the requirements of the Agreement.

V. ENFORCEMENT, LAWS AND ORDINANCES

This agreement shall be enforced under the laws of the State of Arizona. Consultant must comply with all applicable federal, state, and local laws, ordinances, and regulations. Consultant shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Consultant shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant.

VI. INDEPENDENT CONSULTANT

At all times the Consultant shall represent himself/herself to be an independent Consultant offering service to the general public and shall not represent himself/herself, or his/her employees, to be an employee of the County of Cochise. Therefore, the Consultant shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agree to indemnify, save, and hold the County of Cochise, its officers, agents and employees, harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

The Consultant is advised that taxes or social security payments shall not be withheld from a County payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any. The County will not provide any insurance coverage to the Consultant including Workmen's Compensation coverage.

VII. MODIFICATIONS

This Agreement may only be modified by a written amendment signed by persons duly authorized to enter into Agreements on behalf of the County and the Consultant.

VIII. WAIVER

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

IX. INDEMNIFICATION

To the extent allowed by law, Consultant shall defend, indemnify, and hold harmless COCHISE County, and its departments, agencies, boards, commissions, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses

arising from the work performed by the Contractor for the State of Arizona. Regardless of any other term of this Agreement, in no event shall the Parties be responsible or liable for any incidental, consequential, or other indirect damages of any other Party of the Agreement.

X. INSURANCE

Consultant and subConsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subConsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees or subConsultants and Consultant is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Consultant shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

•	General Aggregate	\$2,000,000
•	Products – Completed Operations Aggregate	\$1,000,000
•	Personal and Advertising Injury	\$1,000,000
•	Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The County of Cochise shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant".

b. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The County of Cochise shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant".

X. **INSURANCE (continued)**

- b. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- c. Policy shall contain a severability of interest provision.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable**) in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply when a Consultant or subConsultant is exempt under A.R.S. 23-901, **AND** when such Consultant or subConsultant executes the appropriate sole proprietor waiver form.

4. **Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

- 1. On insurance policies where the County of Cochise is named as an additional insured, the County of Cochise shall be an additional insured to the full limits of liability purchased by the Consultant even if those limits of liability are in excess of those required by this Contract.

X. **INSURANCE (continued)**

2 The Consultant's general and automobile insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be canceled except after thirty (30) days prior written notice has been given to the County, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Cochise County Procurement Department, attention Terry Rutan, 1415 Melody Lane, Bldg C, Bisbee, Arizona 85603.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than A-VII. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Consultant shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and any required endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the Cochise County Procurement Department, attention David Seward, 1415 Melody Lane Bldg C, Bisbee, Arizona 85603. The County project/contract number and project description shall be noted on the certificate of insurance.
- The County reserves the right to require complete, copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE COUNTY'S RISK MANAGEMENT DIVISION.**
- F. **SUBCONSULTANTS:** Consultants' certificate(s) shall include all sub Consultants as additional insured's under its policies **or** Consultant shall furnish to the County separate certificates and endorsements for each sub Consultant. All coverage's for sub Consultants shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** The contracting Agency, in consultation with State Risk, reserves the right to review of make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

XI. MISCELLANEOUS PROVISIONS

- A. No assignment of this Agreement or sub-agreement shall be made by the Consultant with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department. All sub-consultants shall comply with Federal and State laws and regulations which are applicable to the services covered by the sub-agreement and shall include all the terms and conditions set forth herein which shall apply with equal force to the sub-agreement, as if the sub-consultant were the Consultant referred to herein. The Consultant is responsible for Agreement performance whether or not sub-consultants are used.
- B. The Consultant shall establish and maintain procedures and controls that are acceptable to the County for the purpose of assuring that no information contained in its records or obtained from the County or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information must be referred to the County.
- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Agreement shall be the property of the County except for Consultant's pre-existing intellectual property and shall not be used by the Consultant or any other person except with the prior written permission of the County.
- D. This Agreement is subject to the provisions of A.R.S. Sec. 38-511.

The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable Federal regulations under the Act.

XII. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

Consultant hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Consultant's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Consultant shall further ensure that each sub-consultant who performs any work for the Consultant under this Agreement likewise complies with the State and Federal Immigration Laws.

The County shall have the right at any time to inspect the books and records of the Consultant and any sub-consultant in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Consultant's or any sub-consultant's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting the Consultant to penalties up to and including suspension or termination of this Agreement. If the breach is by a sub-consultant, and the sub-agreement is suspended or terminated as a result, the Consultant shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the sub-agreement or retain a replacement sub-consultant, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

The Consultant shall advise each sub-consultant of the County's rights, and the sub-consultant's obligations, under this Section by including a provision in each sub-agreement substantially in the following form:

"The sub-consultant hereby warrants that it will at all times during the term of this Agreement comply with all federal laws applicable to the sub-consultant's employees and with the requirements of A.R.S. §23-214(A). The sub-consultant further agrees that the County may inspect the sub-consultant's books and records to insure that the sub-consultant is in compliance with these requirements. Any breach of this paragraph by the sub-consultant will be deemed to be a material breach of this Agreement subjecting the sub-consultant to penalties up to and including suspension or termination of this Agreement."

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the Consultant. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Consultant's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Consultant shall be entitled to an extension of time, but not costs.

XIII. FOREIGN INVESTMENT AND BUSINESS OPERATIONS:

By signing this agreement Consultant certifies that it does not have scrutinized business operations in Iran and Sudan as per A.R.S sec. 35-297.

This Agreement represents the entire agreement between the COUNTY and the CONSULTANT relating to this requirement and shall prevail over any and all previous verbal and written agreements.

CONSULTANT

COCHISE COUNTY

Brown and Caldwell, Inc.

Authorized Signature

Authorized Signature

Terry Hudson, Procurement Director
As Procurement Director Personally

Print Name and Title

Print Name & Title