

AGREEMENT TO CONVEY EROSION CONTROL DEVICE

This Agreement is made and entered into by and between COCHISE COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, hereinafter referred to as "COUNTY", and the HEREFORD NATURAL RESOURCE CONSERVATION DISTRICT, organized under the laws of the State of Arizona, hereinafter referred to as the "DISTRICT".

RECITALS:

1. The DISTRICT is the recipient of a \$993,880 grant from the Arizona Department of Environmental Quality ("ADEQ") which, together with third party funding, will be used to construct a erosion control device ("ECD") on Horseshoe Draw for flood and erosion control to reduce sediment and E. coli transport to the San Pedro River in Cochise County, Arizona.
2. The ECD will be built and operated on private property owned by The San Jose Ranch, Inc., a corporation organized under the laws of the State of Arizona ("San Jose").
3. In addition to flood erosion control to reduce sediment and E. coli transport to the San Pedro River, based on engineering estimates the parties expect annual incidental potential recharge to the aquifer from the ECD between 36-40 acre feet/year.
4. In addition to the aforementioned benefits, the parties expect that the ECD will reduce the effects of periodic flooding on S. Paloma Trail Road.
5. The parties believe that the COUNTY has more resources to devote to operating and maintaining the ECD and, for that reason, the DISTRICT wishes to convey the ECD to the COUNTY upon completion and acceptance of construction of the ECD.
6. The COUNTY has authority to acquire, operate and maintain the ECD pursuant to A.R.S. 48-3603.
7. The DISTRICT has authority to construct and convey the ECD pursuant to A.R.S. 37-1054.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, COUNTY and DISTRICT make the following agreements:

AGREEMENT:

1. The DISTRICT retained Hilgart-Wilson to design the ECD. The final design of the ECD, a copy of which is attached hereto as Exhibit A and incorporated by reference (the “Design”), has been approved by ADEQ and the Arizona Department of Water Resources (“ADWR”). The DISTRICT has retained Granite Construction to construct the ECD in conformance with the Design. The DISTRICT agrees and warrants that the ECD will be constructed in conformance with the Design and any other requirements set by ADEQ, ADWR or any other State or Federal agency. The ECD will be constructed at no cost to the COUNTY.
2. During construction of the ECD, the COUNTY shall have the right to inspect the ECD at any time to assure itself of proper construction in conformance with the Design. The DISTRICT shall provide inspection reports in a timely manner and can require additional testing at the COUNTY’s discretion. The DISTRICT will supply the COUNTY with all construction management documents and test results.
3. Upon completion of construction of the ECD, the COUNTY shall have the right to perform a final inspection to assure itself of conformance with the Design and that the ECD is fit for the particular purpose for which it was intended. If the COUNTY determines that there are deficiencies, it shall promptly inform the DISTRICT of such deficiencies in writing. The DISTRICT shall have a reasonable time to correct such deficiencies. When the COUNTY determines in its discretion that the ECD has been constructed in conformance with the Design and has no deficiencies, the COUNTY shall inform the DISTRICT in writing, whereupon the DISTRICT shall execute a Bill of Sale in form and substance as set forth in Exhibit A hereto.
4. The obligations of the COUNTY to accept the ECD shall be contingent on an agreement between the COUNTY and San Jose for permanent access to the ECD and other terms regarding operation, maintenance and liability of the ECD, such agreement being in form and substance satisfactory to the COUNTY in its discretion.
5. Nothing in this Agreement shall be construed as implying that the COUNTY has any ongoing obligation to the DISTRICT or anyone else to operate or maintain the ECD in any particular manner other than as prescribed in the Operation and Maintenance Manual attached hereto as Exhibit B. Nor shall the County have any obligation to reconstruct the ECD in case of loss, damage or inoperability.
6. The DISTRICT shall bear the risk of loss for damage to or loss of the ECD Property prior to acceptance of the Bill of Sale by the COUNTY, at which time the risk of loss or damage to the ECD shall rest with COUNTY.
7. The DISTRICT shall be responsible for all monitoring and documentation that may be required by the grants funding the design and construction of the ECD.

8. Each Party (as Indemnitor) agrees to indemnify, defend and hold harmless the other Party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
9. COUNTY may not assign its interest in this Agreement, or in any of the documents described herein, to any party, without the consent of the DISTRICT.
10. The Recitals are hereby incorporated into this Agreement.
11. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration. Reference: Governor of Arizona Executive Order No. 2005-30, dated 10/28/05.
12. This Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statutes (A.R.S.) § 38-511 regarding Conflict of Interest.
13. The DISTRICT agrees to keep all books, accounts, reports, files and other records relating to this Agreement for five (5) years after completion of this contract. In addition, the DISTRICT agrees that such books, accounts, reports, files and other records shall be subject to audit pursuant to A.R.S. § 35-214.
14. Disclosure of any documents or records are subject to the public records provisions of Arizona law, A.R.S. § 39-121 et. seq.
15. This Agreement shall be governed by Arizona law and jurisdiction shall be in Arizona courts with venue in Cochise County, Arizona.
16. In accordance with ARS 35-393.01, the DISTRICT certifies that the DISTRICT is currently not engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel.
17. The DISTRICT hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to DISTRICT's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The DISTRICT shall further ensure that each sub-contractor who performs any work for the DISTRICT under this Agreement likewise complies with the State and Federal Immigration Laws.

18. Any notices, questions, comments and concerns regarding the duties and responsibilities of the Parties under this Agreement are to be directed to:

COUNTY:

Cochise County Administrator
1415 Melody Lane, Bldg. G
Bisbee, Arizona 85603

DISTRICT:

Hereford NRCD
PO Box 3361
Sierra Vista, AZ 85635

*REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS*

DISTRICT and COUNTY have executed this Agreement as of the dates set forth below:

COCHISE COUNTY

Richard Searle
Chairman, Board of Supervisors

Date

ATTEST:

Arlethe Rios
Clerk of Board of Supervisors

Date

APPROVED AS TO FORM:

Britt Hanson
Attorney for the County

Date

HEREFORD NATURAL RESOURCE CONSERVATION DISTRICT

By: _____

Date

Its: _____

Exhibit A
Design of Erosion Control Device

Exhibit B
Bill of Sale