

GRANT FUNDS TRANSFER AGREEMENT

November 27, 2018

The Nature Conservancy
Attn: Patrick J Graham, State Director
7600 N 15th St, Suite 100
Phoenix, AZ 85020

Re: Transfer of Up To \$89,100.00 in Walton Family Foundation (“Foundation”) Grant Funds (“Transfer”) to The Nature Conservancy to Support the Cochise Conservation and Recharge Network (“CCRN”).

Dear Mr. Graham,

We are very pleased to inform you that Cochise County (the “County”) has agreed to transfer \$89,109.00 to The Nature Conservancy (“Awardee”). These funds are part of a grant award originally conveyed under Grant #2011-1195 from the Foundation to the County. The funds were designated for, and will continue to be applied towards, Awardee’s work with partners, including the County and other members of the CCRN, to design, develop and construct a Regional Aquifer Recharge Network, and ensure that water supplies are optimally managed to sustain riparian health within the San Pedro Riparian National Conservation Area (“SPRNCA”), thereby protecting Arizona’s San Pedro River. This Grant Funds Transfer Agreement is hereinafter referred to as the “Agreement.”

I. OBJECTIVE

The purpose of this Agreement is to provide funds to support the design, development, construction and implementation of projects within the CCRN (the “CCRN Project Needs”). More specifically, the parties agree that the funds transferred by this Agreement will be applied as follows:

1. Approximately \$19,300.00 will be applied towards well and other equipment and monitoring installation at the Babocomari CCRN Site.
2. The remaining funds of approximately \$69,809.00, less the administrative and management costs detailed below, will be applied towards construction at the Bella Vista CCRN Site, or, if agreed by a majority of CCRN membership¹, re-design related to the Riverstone CCRN Site.

¹ “CCRN membership” is defined as Cochise County, The Nature Conservancy, the City of Sierra Vista, the City of Bisbee, and the Hereford Natural Resources Conservation District.

The CCRN Sites referenced herein are generally depicted on the attached map of CCRN Site locations. *See Attachment 1.* The parties agree that the funds shall not be applied to any other uses except as otherwise agreed upon by a majority of CCRN membership. The funds may only be used to further CCRN Project Needs. Awardee may collect up to \$9,724.54 (constituting 12.25% of the direct funds, which is half of TNC's current NICRA rate) for administrative or management costs, which shall be demonstrated in accordance with the Reporting requirements of Section III. The Awardee acknowledges that the transfer of funds for the uses herein specified is the only monetary benefit it will receive by this Agreement, and the County will not pay any compensation, fees or costs to Awardee.

II. TERM

Absent agreement of all parties confirmed in writing altering the term, this Agreement shall commence upon execution and shall expire two years after the date of the last signature hereon.

III. REPORTING

A true and correct copy of the tabulation as to the amount of the funds available for transfer is reflected on the November 2018 Budget Report prepared by the County as **Attachment 2**. The parties agree that Attachment 2 details an accurate calculation of the funds to be transferred to Awardee.

Awardee shall submit programmatic and financial reports, as applicable, as follows:

1. Copy of contracts, including any amendments between Awardee and selected contractor or other vendors for purchase and installation of equipment and services engaged for drilling of well(s) at the CCRN Babocomari Site. Copies shall be provided within one month of contract award date.
2. Copy of contracts, including any amendments between Awardee and selected contractor or other vendors for purchase and installation of equipment and services engaged for construction work at the Bella Vista CCRN site. Copies shall be provided within one month of contract award date.
3. Copy of contracts, including any amendments between Awardee and selected contractor or other vendors for design and design-related services related to the Riverstone CCRN site. Copies shall be provided within one month of contract award date.

4. Annual financial reports demonstrating expenditure of the grant funds and administrative or management costs, due by January 15, 2020. A copy of TNC's NICRA shall be submitted as substantiation of the administrative costs.
5. A final financial report detailing the disposition of all funds once exhausted shall be prepared and submitted within 60 days of expenditure of all or substantially all of the transferred funds.

Such reports shall be submitted via post or email to:

Joaquin Solis
Cochise County Highway and Floodplain Department
1415 W Melody Ln, Bldg. E
Bisbee, AZ 85603
jsolis@cochise.az.gov

Copies shall also be submitted, via post or e-mail to:

Morgan Snyder
Program Officer
The Walton Family Foundation
919 18th St NW
Washington, DC 20006
msnyder@wffmail.com

IV. ACKNOWLEDGMENT BY FOUNDATION; NO THIRD-PARTY BENEFICIARY

The Foundation, as the original grantor of the funds to the County, has reviewed and approved of the terms of this Agreement, as evidenced by the acknowledgement e-mail sent by an authorized representative of the Foundation, attached hereto as **Attachment 3**. By acknowledging this Agreement, however, the Foundation is not, nor does it intend to be, a party to or third-party beneficiary of this Agreement. Rather, the parties understand that the Foundation will "close" Grant #2011-1195 within its own records and will take no further part in the management or use of the funds.

V. PAYMENTS

A full disbursement of readily available funds in the amount of \$89,109.00 will be made promptly upon execution, and in no event later than 10 business days after the date of the last signatory to this Agreement.

VI. EXPENDITURE LIMITED TO DESIGNATED PURPOSES

Grant funds may be spent only in accordance with the provisions of the Objective Section herein. Expenditure of Grant funds is subject to modification only with the County's prior written approval. Any Grant funds not expended or committed for the purposes of this Grant must be returned to the County, which will, in turn, return such unexpended funds to the Foundation.

The County may monitor and evaluate Awardee's use of the funds, which may include visits by personnel and agents, discussions with Awardee's personnel, and review of financial and other records and materials related to the activities financed by this Transfer to confirm that use of funds is in accordance with the designated purposes.

VII. PROVIDING FUNDS TO OTHERS

Except as contemplated by payments to vendors or contractors as detailed in this Agreement, the Awardee is prohibited from distributing the funds to others without the written permission of the County.

VIII. DISCLOSURE OF INTERNAL CONFLICTS OF INTEREST

The Awardee must disclose to County any proposed use of funds and/or assets acquired with the funds for activities in which there is an apparent or actual conflict of interest between the Awardee and its employees, board members, or close relatives of the Awardee's employees or board members and make such expenditure subject to prior County approval.

IX. PROCUREMENT

The Awardee will follow its own policies with regard to documentation of procurements and maintain that documentation in their organization's grant files. If the Awardee does not have written procurement policies, it must retain documentation for procurements (over US \$5,000 outside the U.S. or over \$10,000 in the U.S.). Such documentation will include sole source justification, if appropriate, or documentation of a competitive process or comparison shopping.

X. RECORDS AND AUDITS

The Awardee agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Agreement to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed. These records shall be maintained for a period of (5) five years after the final expenditure report is submitted.

The County and its auditors (internal and external) will have access to all records relating to the Agreement for (5) five years from the final financial and programmatic reports for the award have been submitted to the County, unless local law requires a longer retention period.

The Awardee shall be responsible for reimbursing for any disallowance of any expenditures related to the work the Awardee has performed.

XI. SEGREGATION OF COSTS

The Awardee will segregate the costs of the projects described in the Section I, Objective, herein from other projects that it currently administers.

XII. TITLE TO AND USE OF PROPERTY

Title to any property purchased with funds vests in the Awardee. The County may not be charged for use of any property purchased with the funds.

XIII. INTELLECTUAL PROPERTY LICENSE

Title to any Materials developed with the funds vests in the Awardee, with the County getting free irrevocable license to use, publish or distribute all such copyrighted, trademarked, patented Materials, or inventions, trade secrets or other intellectual property rights. The word "Materials" may include, but is not limited to reports, studies, photographs (and negatives), computer programs, drawings, writings or other similar works or documents, along with all supporting data and material, produced under this Agreement. The Awardee agrees to provide the County with copies of the Materials at no cost.

XIV. ACKNOWLEDGMENTS

The Awardee agrees to acknowledge the County's support of the project, including funding contributions and sponsorship, on all media announcements, programs and publications.

XV. ASSIGNMENT

This Agreement may not be assigned by the Awardee in whole or in part without the prior written consent of the County.

XVI. NO AGENCY

No legal partnership or agency is established by this Agreement. Neither party is authorized or empowered to act as an agent, employee or representative of the other, nor

transact business or incur obligations in the name of the other party or for the account of the other party. Neither party shall be bound by any acts, representations, or conduct of the other.

XVII. TERMINATION AND REMEDIES

The County shall have the right to terminate this Agreement by giving 30 (thirty) days written notice to the Awardee of intent to terminate. Should this occur, payment for work satisfactorily completed will be adjusted accordingly. In addition, if in the judgment of the County the Awardee defaults in performance of Awardee duties under this Agreement, whether for circumstances within or beyond the control of the Awardee, the County may immediately terminate this Agreement by written notice to the Awardee. Upon receipt of the termination notice from the County, the Awardee shall take all necessary action to cancel outstanding commitments relating to the work under this Award. In the event of termination prior to the originally agreed upon expiration, the County shall pay of any obligations incurred by the Awardee that could not reasonably be canceled.

XVIII. LOBBYING AND POLITICAL CAMPAIGNING

Awardee shall not use any portion of the funds transferred under this Agreement to engage in any lobbying activities unless the parties specifically agree to such lobbying activities in this Agreement.

Awardee shall not use any portion of the funds transferred under this Agreement to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

XIX. LIABILITY

Awardee shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of Awardee or its officers, agents and employees (“Awardee Agents”) in connection with the performance of this Agreement. Awardee agrees to indemnify and hold the County harmless from any and all claims, loss, damages, costs and expenses, including attorney fees through the appellate levels, made against or incurred by the County arising out of work performed by the Awardee or Awardee Agents under this Agreement, or arising out of any act or omission of the Awardee or Awardee Agents. The County shall be responsible to the Awardee for the errors, omissions or gross negligence of its officers, agents and employees (the “County Agents”) pursuant to A.R.S. §§ 41-621 and 33-1551, including a breach of the terms of this Agreement by County or County Agents.

XX. USE OF COUNTY NAME/LOGO

The Awardee may not use the County's name and/or logo in any way without prior written consent from the County.

XXI. CONFIDENTIAL INFORMATION

During the course of the performance of this Award, the Awardee may have access to materials, data, strategies, other information relating to the County and its programs, or systems, which are intended for internal use only. Subject to Arizona's Open Meeting Law, any such information acquired by the Awardee shall not be used, published, or divulged by the Awardee to any person, firm, or corporation or in any advertising or promotion regarding the Awardee or the Awardee's services, or in any manner or connection whatsoever without first having obtained the written permission of the County, which permission the County may withhold in its sole discretion.

XXII. TAXES

The Awardee agrees to be responsible for any and all filing and payment of taxes and for compliance with any and all provisions and requirements arising under any applicable tax laws. Neither federal, nor state, nor local income tax, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Awardee, or employees of the Awardee. If appropriate, the County shall report all fees paid to the Awardee to the IRS on Form 1099.

XXIII. COMPLIANCE WITH LAWS

The Awardee represents, warrants, and agrees that, in connection with the transactions contemplated by this Agreement: (a) the Awardee can lawfully work in the United States; (b) the Awardee shall obtain, at its own expense (except to the extent otherwise explicitly stated in this Agreement) any permits or licenses required for the Awardee's services under this Award; and (c) the Awardee shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of Arizona, and any other jurisdiction(s) in which the Awardee is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Awardee under this Award (in each case, an "Applicable Law"). The Awardee shall not take any actions that might cause the County to be in violation of any of such Applicable Laws.

XXIV. COMPLIANCE WITH ANTI-TERRORISM LAWS

The Awardee agrees that it will use any funds received under this Agreement in compliance with all applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including, but not limited to the USA Patriot Act of 2001 and Executive Order 13224.

XXV. CHOICE OF LAW/FORUM

This Agreement shall be interpreted, construed and governed by the laws of the State of Arizona and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Award, the County and the Awardee agree that litigation shall be conducted in the State of Arizona.

XXVI. BINDING EFFECT/AMENDMENTS

This Agreement shall become binding when signed by the parties. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Award between the parties relating to the work set out above. No amendment shall be effective except in writing signed by both parties, and acknowledged by the Foundation.

XXVII. SEVERABILITY

If any provision of this Award is held invalid, the other provisions shall not be affected thereby.

Attachments: (1) CCRN Project Sites Map
(2) November 2018 Budget Report prepared by the County
(3) November 19, 2018 e-mail from M. Snyder of Walton Foundation

[Signatures to follow]

COCHISE COUNTY FLOOD CONTROL DISTRICT

Peggy Judd, Chair
Cochise County Flood Control District Board

Date: _____

ATTEST:

Arlethe Rios, Clerk of the Board

THE NATURE CONSERVANCY

Name (signed)

Date: _____

Name (printed)
Its Duly Authorized Representative