

**INDEPENDENT CONTRACTOR AGREEMENT (ICA)
SRP Flowtography® Equipment Installation and O&M Costs**

This Independent Contractor Agreement (hereinafter "Agreement") is made between THE COCHISE COUNTY FLOOD CONTROL DISTRICT with its principal address at 1415 Melody Lane, Building F, Bisbee, Arizona 85603 (the "Client") and the SALT RIVER VALLEY WATER USERS ASSOCIATION with its principal address at 1521 N Project Drive, Tempe, Arizona 85281 (the "Association").

RECITALS

- A. The Association, as an agent of the Salt River Project Agricultural Improvement and Power District ("SRP"), and the Client desire to install SRP Flowtography® station(s) and to incur operation and maintenance ("O&M") costs, as further defined herein, for one or more Sites, as further detailed herein.
- B. The Association, as an agent of SRP, and the Client desire to install up to 2 SRP Flowtography® stations and to incur O&M costs for the site at Coyote Wash (Upstream) and Coyote Wash (Downstream). Coyote Wash (Upstream) and Coyote Wash (Downstream) are hereinafter referred to collectively as the "Sites."
- C. Data gathered and processed from the Sites will be hosted on AZWaterGage.com and within the Association's physical offices, as further detailed herein. To obtain access to the data on AZWaterGage.com, the Client and the Association will enter into a User Access Agreement, which enables unique credentials to be issued for the purpose of safeguarding and preventing access to the data collected at the Sites, which is owned by the Client.
- D. The Association agrees to perform these services for Client under the terms and conditions set forth in this Agreement.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the Association and Client agree as follows:

SCOPE OF WORK

Client engages the Association to provide the equipment and services described in **Schedule A**, attached hereto and by this reference incorporated herein (the "Work"). The Association agrees to furnish the Work in accordance with Schedule A. Client is responsible for obtaining all necessary permits, which may include land access agreements and/or permits necessary to install and maintain the monitoring equipment.

COMPENSATION AND PAYMENT

Client agrees to pay the Association in accordance with the compensation and payment terms set forth in **Schedule B**. The Association agrees to accept such amounts as full payment for its Work and to sign such waivers of lien, affidavits and receipts as Client shall request in order to acknowledge payment.

MATERIAL, SUPPLIES, EQUIPMENT AND TOOLS

The Association shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the Work agreed to be performed in accordance with this Agreement.

INDEPENDENT CONTRACTOR RELATIONSHIP

The Association is an independent contractor and is not an employee, servant, agent, partner or joint venturer of Client. In consultation with the Association, Client has determined the Work to be done by the Association, but the Association shall determine the means by which it accomplishes the Work. Client is not responsible for withholding, and shall not withhold, FICA or taxes of any kind from any payments which it owes the Association. Neither the Association nor its employees shall be entitled to receive any benefits which employees of Client are entitled to receive and shall not be entitled to worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security on account of their work for Client.

EMPLOYEES OF CONTRACTOR

The Association shall be solely responsible for paying all FICA and other taxes, worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing and other benefits for the Association and its employees, servants and agents.

INSURANCE

The Association is self-insured.

NON-WAIVER

The failure of either party to this Agreement to exercise any of its rights under this Agreement at any time does not constitute a breach of this Agreement and shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

CONFLICT OF INTEREST

Client may, by written notice to the Association, immediately 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 Client is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter.

DOCUMENTATION AND RECORD KEEPING

Client and Association will retain all records that are pertinent to the activities to be funded under this Agreement. Although the Association will retain all records pertinent to the activities funded under the Agreement, the Association acknowledges that all records and data are owned by the Client and the Association may not alter, disclose, use, or reference any of the records or data generated as a result of this Agreement without express, written consent of the Client.

Client and Association will retain all records pursuant to the Client's and Association's record retention policy. Pursuant to the Client's and Association's record retention policy, records will be retained for 6 years. The parties acknowledge that data and records may be required to be retained longer if any litigation, claim, or audit commences, or Client gives Association written notice that any litigation, claim, or audit is anticipated to commence before the expiration of the record retention period.

NON-DISCLOSURE

The Association understands that services performed under this Agreement are private and the use or disclosure of records or data created as a result of this Agreement, when not directly connected with the administration of the Association's responsibilities with respect to services provided under this Agreement, is prohibited by this Agreement and Arizona State Law unless written consent is obtained from Client. Notwithstanding the foregoing, Client understands that the Association is acting as an agent of the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona (the District), and the District may be subject to certain disclosure requirements under the Arizona public records law (A.R.S. § 39-101, et seq.). If the Association receives a public records request for records or data created as a result of this Agreement, the Association will notify Client, as soon as reasonably practical, of any such request so that Client may have an opportunity to take appropriate action to maintain confidential handling of such information.

ACKNOWLEDGEMENT

Both parties shall acknowledge during the term of the Agreement the contribution of Client funds towards the Sites, and the Association's services & technology, in all instances where the Sites are mentioned.

DATA/INFORMATION REQUEST

The Client owns any data and records produced or purchased during the term of this Agreement and has the right to obtain, reproduce, publish or otherwise use the data and records or authorize others to receive, reproduce, publish or otherwise use the data and records. All image and data requests will transact directly between the Client and the Association and will be accomplished in accordance with the procedure detailed in Schedule C. Further distribution of the data and records is within the exclusive authority and control of the Client. Client's consent herein to Association's use of third party website or other data hosting sources to maintain, store or house Client's data and records is based upon Association's reasonable efforts to ensure the third party entities' agreement to maintain the confidentiality of Client's data and records. In advance of executing this Agreement, Association provided Client with records retention and privacy policies of all third party entities Association will utilize to house, store or maintain Client data and records. Client has reviewed those documents and acknowledges and agrees that the Association has met the reasonable efforts standard with respect to the Association's current third party website or hosting service. Association will provide Client with any new agreements or amendments to records retention and privacy policies of all third party entities the Association utilizes to house, store or maintain Client data and records.

LEGAL ARIZONA WORKERS ACT COMPLIANCE

The Association hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Association's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Association shall not use sub-consultants to perform the Work.

Client shall have the right at any time to inspect the books and records of the Association in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Association'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 Association to penalties up to and including suspension or termination of this Agreement.

NO AUTHORITY TO BIND CLIENT

Neither the Association nor Client has authority to enter into contracts on behalf of, or authority to bind the other party.

NO THIRD PARTY BENEFICIARY

The Association and Client agree that they are the only parties to this Agreement. The Association and Client agree that there are no third party beneficiaries to this Agreement.

NOTICES

Any notice given in connection with this Agreement shall be given in writing and delivered either by hand to the party or by certified mail, return receipt to the addresses detailed in this Agreement.

ENTIRE AGREEMENT

This is the entire Agreement between the parties and can only be supplemented, amended or revised in writing that is signed by each of the parties.

ASSIGNMENT

The Association may not assign any of its rights or duties under this Agreement without the prior written consent of Client.

TERM

Once installation is complete, this Agreement is effective and shall continue in effect for a minimum of 24 months unless cancelled by either party with a ninety (90) day written notice to the other party, and shall thereafter continue on a month-to-month basis until cancelled by either party upon thirty (30) days written notice to the other party. In the event Client cancels, Client shall reimburse the Association for expenses incurred to the 30 day concluded date, or otherwise as mutually agreed to. A plan to convey any raw data, to transfer images, or data hosting web services will be evaluated within the 30 day time frame. The Association has no obligation beyond the 30 day notice to facilitate or retain the data or images, unless otherwise agreed to by the parties and recorded with signatures.

[Remainder of page intentionally left blank]

LAW AND VENUE

This Agreement shall be governed and construed in accordance with Arizona law and venue shall be in Maricopa County.

The parties have executed this Agreement this _____ day of _____, 20__.

COCHISE COUNTY FLOOD
CONTROL DISTRICT

THE SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By _____

By _____

LEE W. ESTER

Its: [Title]

Its: Manager, Water Measurement for SRP

ATTEST:

By _____
Arlethe Rios, Clerk, Board of Supervisors

APPROVED AS TO FORM:

By _____
Britt Hanson, Chief Civil Deputy County Attorney

SCHEDULE A

SCOPE OF WORK (Page 1 of 2)

**Equipment Installation and 12 Month Operation and Maintenance Services
(October 1, 2018 – September 30, 2020)**

Schedule of Services to be Completed

- 1) *Identify channel cross-section for SRP Flowtopography® Sites*
- 2) *Conduct a field survey of the SRP Flowtopography® Sites channels*
- 3) *Develop a Hydrologic Engineering Center's River Analysis System (HEC-RAS) stage and discharge table for the channel cross-section*
- 4) *Install an event gage and pressure transducer assembly (Pressure transducer data is stored on site – not telemetered)*
- 5) *Install an off bank pole and housings and equip with SRP Flowtopography® camera equipment*
- 6) *Provide stage data hosting on AZWaterGage.com (AZWG.com) after each data collection and data processing effort*
- 7) *Provide access to thumbnail images transmitted by a cellular network via a third party website.*
- 8) *Provide 24 months of Operation and Maintenance services at SRP Flowtopography® Sites*
 - a. *This will include up to six Site servicing visits per Site per year. A Site service includes pressure transducer data and image collection, and subsequent storage of the data and records by the Association.*
- 9) *Break-fix events – any materials, repairs, services, or contingency that are an exception to the scheduled plan and cannot be foreseen. The Association will notify and obtain the approval of the Client by an email or phone call before performing any services that result in additional charges to the Client in excess of \$750 per site per year when addressing a Break-fix event. Client's designated representative for approval is Joaquin Solis, jsolis@cochise.az.gov or 520.432.9300*

Stabilization Period:

- 1) When new equipment is installed, a 30-day period of stabilization should be anticipated. During this period, the equipment will be evaluated for solar/battery performance, time lapse image collection, and ability to connect to the cellular network. In this case, the parties anticipate that Verizon's cellular network, located near Sierra Vista, Arizona, will provide infrastructure.
- 2) Flowtopography is designed to operate on the Verizon network. The Association is not responsible for the operation of the Verizon network or its performance, or the ability of the Flowtopography equipment to suitably connect and transfer images via the Verizon network to the third party image hosting web service (Drone Command Hub). The Association is not responsible for loss or inability to connect to the Verizon cellular network, or for service issues at the Drone Command Hub web service.

SCHEDULE A

SCOPE OF WORK (Page 2 of 2)

Equipment/Components:

- 1) Equipment components and assurances of quality construction, including periods of stated warranty for specific integrated equipment will be subject to each manufacturer's warranty statement and terms. The Association does not directly warrant manufacturer-specific components. The Association costs to facilitate repairs due to manufacturers warranted items will be invoiced as required.
- 2) After completion of installation and except in the event such losses are incurred as the result of the conduct of the Association, Client is responsible for any equipment damage, acts of vandalism, fire, or damages from weather.
- 3) Equipment outages/ malfunctions/breakdowns can result in loss of image collection and subsequent record. After completion of installation and except in the event such losses are incurred as the result of the conduct of the Association, the Association is not responsible for loss of image or data collection.
- 4) Inclement weather and extreme hot/cold can affect the performance and operation of the Flowtography system.
- 5) Performance of the Flowtography electronics, battery, and other components is subject to each manufacturer's operating temperature range for its products and equipment.
- 6) Client is responsible for the permitting of the Sites and any land owner access agreements that may be required.

SCHEDULE B

COMPENSATION AND PAYMENT (Summary) (Page 1 of 2)

Equipment Installation and 24 Month Operation and Maintenance Costs

<u>Location</u>	New Hardware and Installation Costs	O&M Costs (Year 1)	O&M Costs (Year 2)*
1. <i>Coyote Wash Upstream</i>	\$12,000		
<i>A. Site Servicing (Pressure transducer & image)</i>		\$4691	\$4832
<i>B. Pressure transducer data processing & posting to AZWG.com</i>		\$3183	\$3278
<i>C. Image processing & retention at Association</i>		\$495	\$510
<i>D. Cellular Fees</i>			
2. <i>Coyote Wash Downstream</i>	\$12,000		
<i>A. Site Servicing (Pressure transducer & image)</i>		\$4691	\$4832
<i>B. Pressure transducer data processing & posting to AZWG.com</i>		\$3183	\$3278
<i>C. Image processing & retention at Association</i>		\$495	\$510
<i>D. Cellular Fees</i>			
3. <i>Materials and Contingency – Materials, break-fix events, and other services required to keep the Flowtography® sites operational** (Estimated at 15 percent of O&M total)</i>		\$3466	\$3569
Totals (applicable taxes not included)	\$24,000	\$26,570	\$27,365

*O&M Costs escalate at 3 percent per year after year 1.

Adhoc Services

**In the event of any unforeseen circumstances, equipment needs or break-fix events, the following Association costs could apply:

Transportation – Helicopter	\$650 - \$1000 per rotor hour (depends on aircraft)
Transportation – Vehicle – ground	\$10 per SRP labor hour
Additional Materials	Retail costs plus 25%
Cellular Network Fees	\$85 per site per month
Labor (Professional Services)	\$125 per hour
Labor (Non-Technical if appropriate)	\$110 per hour
Data Processing (Professional & Analytical Services)	\$145 per hour
Direct Hydrographic Measurement (exclusive of travel costs)	\$510 per site/event
Overnight stay and meal expenses (when required)	\$275 per day per person

SCHEDULE B

COMPENSATION AND PAYMENT (Summary) (Page 2 of 2)**Adhoc Data Summary Reports**

At the request of the Client, the Association can produce Annual, Seasonal or Quarterly Reports (per contractual year – see Note below).

The cost to produce the reports are as follows:

Report Type	Cost per Report	Total Costs*
1. <i>Annual Report (2 sites, no quarterly reports)</i>	\$6000	\$6000
2. <i>Seasonal Reporting (2 sites, no annual report, no quarterly report)</i>		
<i>Winter (Oct 1st to May 31st)</i>	\$4000	
<i>Summer (June 1st to September 30th)</i>	\$4000	
3. <i>Quarterly Reports (2 sites, no annual report, no seasonal report)</i>	\$3000	\$12,000
* (applicable taxes not shown – tax exemption certificate required)		

Reports will contain the following information:

- 1) Period of Record.
- 2) Stage Hydrograph for each site.
- 3) Flow Hydrograph for each site (Provisional Flow data calculated using derived flow equations)
- 4) Statement of what occurred at each site.
- 5) Service record of each site.
- 6) General observations and analysis/comments

Payment Terms

All invoices will be accompanied by a brief description of equipment and/or services provided by Site, date, and purpose. Compensation (price) in this Agreement is based upon fixed costs. Invoices are due and payable within 30 days. For each calendar month, or fraction thereof, that payment is late, the Client shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

Equipment and Installation

During the equipment implementation of the project, the Association will invoice in advance for 50% (\$12,000) of the total estimate. The funds will be used directly towards the purchase of equipment and preparing site infrastructure. The balance of the costs will be invoiced when the Sites are completed. Equipment and Installation Costs Total \$24,000 for Coyote Wash Upstream and Coyote Wash Downstream.

O&M Recurring Costs - Invoicing

At such time that the initial installations are complete, each site will enter into the O & M phase. Invoicing for routine services will occur at regular intervals and will be submitted subsequent to scheduled or unscheduled Break-fix service events.

SCHEDULE C

Cochise County Flood Control District Information* Request (Page 1 of 2)

Current Contract Date Range – October 1, 2018 to September 30, 2020 *(from Schedule A)*

Date requested: _____ **Date needed:** _____

Person requesting the information: _____

Primary contact person: _____

Phone: _____ **Email:** _____

What specific information is being requested?

Transfer method (FTP, floppy disk, USB stick, other):

Comments:

***Information is comprised of raw SRP Flowtography® images or subsequent data and records developed from the post-processing of those images or pressure transducer data. Information eligibility is limited to that which was collected during periods of contracted service(s).**

SCHEDULE C

Cochise County Flood Control District Information Request (Page 2 of 2)

By signing this page the person requesting the Information agrees to the following conditions:

- Except as a result of the Association's or its agent's breach of their obligations under this Agreement or any liability resulting from the Association's or its agent's own negligence, gross negligence or intentional misconduct, the Association shall not be liable for any damages whatsoever resulting from or related to any use of the data and records, including, but not limited to, direct, indirect, special, incidental, consequential or exemplary damages whatsoever. In no event shall the Association be liable for damages in excess of the amounts paid to the Association under this Agreement.
- The undersigned hereby agrees to the above terms and conditions and represents that he/she has the authority to execute this agreement on behalf of the Client.
- Information provided by the Association to the Client will be distributed further at the discretion of the Client.
- I agree to the Information Request Fee Schedule as follows:
 - Any person requesting Information may be invoiced for the Association's services at the following rate. Payment may be required before any information is released:
 - \$145 per hour, (half hour minimum)

Name (print): _____ for Cochise County Flood Control District

Signature: _____ Date: _____

<p>For Association Use:</p> <p>Information request processed by: _____</p> <p>Labor hours: _____</p> <p>Information provided: _____</p> <p>Transfer Method: _____</p> <p>Date Transferred: _____</p> <p>Comments: _____</p>
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