

**Memorandum of Understanding
Between
The Nature Conservancy of Arizona
And
Cochise County, State of Arizona
And
City of Sierra Vista, Arizona**

This Memorandum Of Understanding (the "MOU") is entered into on October 1, 2020, between the Cochise County Flood Control District, a validly organized governmental entity established under the laws of the State of Arizona and under the jurisdiction of Cochise County, with its principal place of business at 1415 Melody Lane Bldg. F, Bisbee, AZ 85603 (the "County"); and The Nature Conservancy, a District of Columbia non-profit corporation, by and through its Arizona Program, with its principal place of business at 1510 E. Fort Lowell Road, Tucson, AZ 85719 (the "Conservancy") and the City of Sierra Vista, a validly organized governmental entity established under the laws of the State of Arizona, with its principal place of business at 1011 N. Coronado Drive, Sierra Vista, AZ 85635 (the "City").

RECITALS:

1. The County, the City, and the Conservancy share a mutual goal in ensuring 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.
2. The parties are members of the Cochise Conservation and Recharge Network (CCRN), whose mission is to implement a regional network of land and water management projects that result in a healthy watershed, flowing San Pedro River, conservation of water resources, and a vibrant local economy.
3. The parties are also members of the Upper San Pedro Partnership (USPP), a consortium of agencies and organizations working together to meet the long-term water needs of the Sierra Vista Subwatershed by achieving sustainable yield of the regional aquifer to preserve the SPRNCA, and ensure the long-term viability of Fort Huachuca.
4. The parties have identified the 1,811-acre Riverstone property owned by the County (the "Property") as a possible location for a recharge facility and have identified the water source to be recharged as treated effluent conveyed from the City's Environmental Operations Park wastewater treatment facility.
5. The County and the Conservancy have each allocated funds to retain a contractor to assess the feasibility of a recharge facility or multiple facilities on the Property to increase base flows in the San Pedro River. Sierra Vista has allocated staff time to serve as the project manager.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties agree to the following:

AGREEMENT:

1. **Project Name:** Riverstone Ranch Property Phase 2 Site Investigation (the "Project").
2. **Project Performance Period:** October 1, 2020 through May 1, 2021. Forty-five (45) days prior to the expiration date of the Project Performance Period, the parties shall meet to review the work accomplished and determine whether the Project will be completed within the designated Project Performance Period or whether it must be extended to accommodate unanticipated delays.

3. Project Description: This Project will be focused on assessing the feasibility of a recharge facility or facilities on the Property to increase base flows to the San Pedro River. The draft Scope of Work for the Project is more particularly described in the attached Exhibit A and incorporated herein by reference.

4. The Conservancy shall:

- a) By separate document, grant up to \$172,436.43 to the City to hire a consultant for the Project subject to the terms and conditions mutually agreed upon between the Conservancy and the City.
- b) Provide input and feedback and fully participate in the selection of the most qualified consultant(s) for the Project and approve the terms and conditions of the contract for the Project.
- c) Serve as a point of contact with the selected consultant(s) and be a direct recipient of project deliverables.
- d) Ensure that the Conservancy's previously developed groundwater modeling work conducted on other properties in the SPRNCA is used to inform infrastructure placement and development.
- e) Participate in key strategic decisions with the County and the City regarding implementation of the Project.
- f) Ensure that the Project plans use scientifically supported and cost-effective technology that is agreed upon by the project team for the benefit of the San Pedro River.

5. County shall:

- a) By separate document grant up to \$125,000 to the City to hire a consultant for the Project.
- b) Provide input and feedback and fully participate in the selection of the most qualified consultant(s) for the Project and approve the terms and conditions of the contract for the Project.
- c) Serve as a point of contact with the selected consultant(s) and be a direct recipient of project deliverables.
- d) Participate in key strategic decisions with the Conservancy and the City regarding implementation of the Project.
- e) Ensure that the Project plans use scientifically supported and cost-effective technology that is agreed upon by the project team for the benefit of the San Pedro River.

6. City shall:

- a) Administer in a fiscally responsible manner and in compliance with the terms and conditions of the grant agreements with each party, and pursuant to the budget mutually agreed upon between the parties, the Conservancy's grant of funds up to \$172,436.43, and the County's grant of up to \$125,000 in fulfilling the Project goals and objectives.
- b) Serve as primary Project Manager for the selected consultant(s) and ensure open communication between the consultant(s), the County and the Conservancy.
- c) Contract with and monitor the performance of the most qualified consultant(s) for the Project, as agreed upon by all three parties to this agreement.
- d) Participate in key strategic decisions with the County and the Conservancy regarding implementation of the Project.
- e) Ensure that the Project plans use scientifically supported and cost-effective technology that is agreed upon by the project team for the benefit of the San Pedro River.

Project Representatives:

The Conservancy: Holly Richter, AZ Water Projects Director
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Brooke Bushman, AZ Water Projects Coordinator
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County: Jackie Watkins, Director of Engineering and Natural Resources
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Mark Apel, Environmental Projects Coordinator
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Sierra Vista: Sharon Flissar, Director of Public Works
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(520) 458-5775

7. Mutual Responsibilities of the Parties:

a) Ownership of Documents and Data:

All rights (including, without limitation, copyright), title, and interest to and in any reports, studies, photographs (and negatives), software, drawings, designs, writings or other works or documents produced by the consultant for this Project, along with all drafts, versions, supporting data and other material created in connection therewith (collectively the "Works"), are "works made for hire" as defined under the copyright laws of the United States and shall be jointly owned by the parties. To the extent that any Works are not works made for hire, the consultant shall assign, and at any time in the future upon request shall assign, all right, title and interest, including, without limitation, copyright and other intellectual property rights, in and to the Works to the City, the Conservancy, and the County.

The parties agree that all intellectual property previously created by any party shall remain the exclusive ownership of the creating parties and further agree that the Works created shall be used for non-profit purposes only. Any use or further distribution of the Works shall require written consent of the other parties.

b) Use of Name and Logo:

Neither party may use the other's name and/or logo in any way without the prior written consent of the other parties, except to the extent the work performed contemplates their inclusion in the final work product.

c) Confidentiality

During the course of the performance of this MOU, the parties may have access to materials, data, strategies, trade secrets, proprietary information, systems or other information relating to the other parties and their programs, which is intended for internal use only. Any such information acquired shall not be used, published or divulged by any of the parties to any person, firm in any manner, or connection whatsoever without first having obtained the written permission of the other parties, which permission may be withheld in their sole discretion. Notwithstanding any provision in the MOU to the contrary, disclosure of any document or records are subject to Arizona public records law, A.R.S. § 39-121 et. seq.

d) Dispute Resolution:

The parties agree that, in the event of any dispute relating to this MOU or the performance of work, they shall first seek to resolve the dispute amicably, in good faith, and through mediation.

e) Responsibility:

The parties agree that, in the event of any dispute relating to this MOU or the performance of

work, they shall first seek to resolve the dispute amicably, in good faith, and through mediation. If the parties are unable to reach an amicable resolution to any dispute, this MOU shall terminate upon a mutually determined date and the parties shall work together in good faith to complete any ongoing activities.

f) Compliance with the Law:

The parties will observe all the applicable laws and regulations during the execution of the work implemented under the provisions of this MOU.

g) Validity of any Provision:

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

h) Entire Agreement:

This MOU, including any attachments, embodies the entire and complete understanding between the parties, and any amendment to this MOU will only be valid if in writing and signed by all parties. Nothing in this MOU shall be construed as a document by which funds are transferred. All documents associated with any transfer of funds shall be by separate document.

