



COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603
Phone: (520) 432-8391 | Fax: (520) 432-8397

PROFESSIONAL SERVICES AGREEMENT Mosquito Trapping Services PSA 23-15-HEA-01

This agreement is made and entered into this 13th day of December 2022 by and between **COCHISE COUNTY**, hereinafter referred to as the COUNTY, and **ARBO SCIENTIFIC** hereinafter referred to as the CONTRACTOR.

I. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this agreement, Contractor shall provide all material, labor and transportation to perform the services as described in **Attachment "A" Scope of Work**.

II. COMPENSATION AND METHOD OF PAYMENT

In consideration for the performance of the services described in **Attachment "A"** the County shall pay the Contractor the amounts, not to exceed, as described in the attached herein as **Attachment "B" Fee Schedule**.

The County will pay the Contractor within thirty (30) days of services rendered following the submission of itemized invoice(s) including the Contractor company name, phone, invoice number, email address, mailing address, itemized hourly accounting, case number, case name, prior County approval and for any services rendered. No payment shall be issued prior to receipt of service and correct invoice. Each payment request must bear written certification by an authorized County representative confirming the services for which payment is requested have been performed and received. Payment inquiries must be emailed to the County contact below.

Contractor: Daniel Williamson
Arbo Scientific
2112 N. Dragoon
St. Suite 11.
Tucson, AZ 85745
Phone: 480-772-6455
Daniel@arboscience.com

County: **County of Cochise**
Alicia M. Thompson, DrPH, LMSW,
Health Director
S 1415 Melody Lane, Bldg A
Bisbee, AZ 85603
Office: 520-432-9400
Cell: 520-366-7412
athompson@cochise.az.gov

III. DURATION AND RENEWAL

The Consultant shall not commence any billable work or provide any material or services under this Agreement until Consultant receives an executed copy of the Professional Service Agreement and/or purchase order or is otherwise directed to do so in writing by the County Procurement Office. The Consultant shall complete all work to the satisfaction of the County from April 1, 2023-2027 through October 31, 2023-2027 in accordance with the Scope of Work.

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 Contractor 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 Contractor. 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 Contractor 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 Contractor for acting or failing to act any of the following, in the opinion of the County:
 - 1. Contractor provides personnel who do not meet the requirements of the Agreement;
 - 2. Contractor fails to adequately perform the stipulations, conditions, or services/specifications required in the Agreement;
 - 3. Contractor attempts to impose on the County personnel, materials, products, or workmanship that is not of an acceptable quality;
 - 4. Contractor fails to furnish the required service and/or product within the time stipulated in the Agreement;

5. Contractor fails to make progress in the performance of the requirements of the Agreement and/or gives the County a positive indication that Contractor 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. Contractor must comply with all applicable federal, state, and local laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

VI. INDEPENDENT CONTRACTOR

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is advised that taxes or social security payments shall not be withheld from a County payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any. The County will not provide any insurance coverage to the Contractor including Workmen's Compensation coverage.

VII. MODIFICATIONS

This Agreement may only be modified by a written modification signed by a Procurement Representative and an authorized representative for the Contractor through a bilateral modification. The County may, at its discretion, make administrative changes, or exercise any option years, through the issuance of a unilateral modification.

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, Contractor shall indemnify, defend, and hold harmless Cochise County, and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") 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 (including death), personal injury, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Contractor 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 contractor 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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor 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 Contractor agrees to waive all rights of subrogation against Cochise County, its officers,

officials, agents and employees for losses arising from the work performed by the Contractor for Cochise County. The scope of this indemnity will not be limited by the Insurance Requirements contained herein.

X. INSURANCE

- Consultant shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Consultant, its agents, representatives, employees.
- The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County of Cochise 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 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 (CGL) – Occurrence Form

WAIVED

2. Business 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)	\$ 500,000
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- a. The policy shall be endorsed, as required by this written agreement, to include the County of Cochise and its departments, agencies, boards, officers, officials, agents and employees as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant involving automobiles owned, hired and/or non-owned by the Consultant.

3. 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	\$1,000,000

- b. 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, 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.

- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

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

- 1. The Consultant's policies, as applicable shall stipulate that the insurance afforded the Consultant shall be primary and that any insurance carried by the Department, its agents, officials, employees or the County of Cochise shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E).
- 2. Insurance provided by the Consultant shall not limit the Consultant's liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Consultant's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the County of Cochise. Within two (2) business days of receipt, Consultant must provide notice to the County of Cochise if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Cochise County Procurement Department, attention Maria G. Morales, 1415 Melody Lane, Bldg C, Bisbee, Arizona 85603.

D. **ACCEPTABILITY OF INSURERS:** Consultant's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The County of Cochise 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 (valid ACORD form or equivalent approved by the County) evidencing that Consultant has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the County before work commences. The County's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. 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 Maria G. Morales, 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, certified 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. **APPROVAL and MODIFICATIONS:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Contracting Agency in consultation with the Risk Management Department, whose decision shall be final. Such action will not require a formal Agreement 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 Contractor with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department. All subcontractors 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 subcontractor were the Contractor referred to herein. The Contractor is responsible for Agreement performance whether or not sub-contractors are used.
- B. The Contractor 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 data created, used and/or modified under this agreement shall be the property of Cochise County and shall not be used by the Contractor 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 regarding Conflict of Interest.
- E. The Contractor 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.
- F. All parties shall comply will all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.
- G. The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.
- H. Notwithstanding any other provision of the agreement, the parties understand that Cochise County is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.
- I. This agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this agreement shall be in Cochise County, Arizona.

XII. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

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

Any breach of the Contractor's or any sub-Contractor'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 Contractor to penalties up to and including suspension or termination of this Agreement. If the breach is by a sub-Contractor, and the sub-agreement is suspended or terminated as a result, the Contractor 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-Contractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

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

"The subcontractor hereby warrants that it will at all times during the term of this Agreement comply with all federal laws applicable to the sub-Contractor's employees and with the requirements of A.R.S. §23-214(A). The sub-Contractor further agrees that the County may inspect the sub-Contractor's books and records to ensure that the sub-Contractor is in compliance with these requirements. Any breach of this paragraph by the sub-Contractor will be deemed to be a material breach of this Agreement subjecting the sub-Contractor 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 Contractor. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Contractor shall be entitled to an extension of time, but not costs.

XIII. NO BOYCOTT OF ISRAEL

In accordance with A.R.S. §35-393.01, The parties certify that they are not currently engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

XIV. FOREIGN INVESTMENTS AND BUSINESS OPERATIONS:

In accordance with ARS §35-393.01, Contractor certifies that the Contractor is currently not engaged in, and for the duration of this agreement agrees not to engage in a boycott of Israel.

XV. LEGAL REMEDIES

If requested in writing by either the County or the Contractor, the County and the Contractor shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by first entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees.

Any such Arbitration shall be conducted by an experienced and knowledgeable Arbitrator(s) and shall include a written record of the Arbitration hearing. If the Contractor and Cochise County can mutually agree upon an Arbitrator, that Arbitrator shall be selected. If not, the Contractor and Cochise County shall each select an Arbitrator and those two Arbitrators shall select a third Arbitrator (or the Contractor and Cochise County shall request a third Arbitrator from the Arizona Arbitration Association). All Arbitrations will be held in the State of Arizona and under the Arizona Rules of Arbitration. All claims and controversies shall be subject to A.R.S. § 12-1518 et. seq.

XVI. APPLICABLE LAW

This Contract shall be governed by, and the County and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this Contract or in statutes pertaining specifically to the State. The Law of the State of Arizona shall govern this Contract, and suits pertaining to this Contract shall be brought only in Federal or State Courts in the State of Arizona. This provision does not supersede or invalidate the arbitration requirement in Paragraph XIV. titled Legal Remedies.

XVII. LIMITATION OF LIABILITY

Excepting provisions in this Agreement related to Indemnification and Insurance, to which this liability limitation provision does not apply, the total amount of all claims the County may have against the Contractor under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of the fees or \$500,000. As the County's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Contractor and not against any of the Contractor's employees, officers or directors.

Excepting provisions in this Agreement related to Indemnification and Insurance, to which this liability limitation provision does not apply, neither the County nor the Contractor shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.”

**PROFESSIONAL SERVICES
AGREEMENT
23-15-HEA-01
Mosquito Trapping
Services**

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

APPROVED BY:

Independent Contractors

The Parties are deemed independent contractors and may not bind the other, except as provided for herein or authorized in writing by the other Party.

Arbo Scientific

Cochise County

By: _____
Name: Daniel Williamson
Title: Executive Director

Date: _____

By: _____ Date: _____
Name: Ann English
Title: Chairman Board of Supervisors

I have read this Agreement, and understand the obligations placed on me and my organization and other Arbo Scientific employees under my supervision and agree to be bound by it.

Responsible Party

Date: _____

**PROFESSIONAL SERVICES AGREEMENT
Mosquito Trapping Services
23-15-HEA-01**

Attachment "A" Scope of Work

**See attached 2023-2027 Cochise County Vector Surveillance
Proposal**



Cochise Proposal
2023-2027.pdf