

**Master Service Agreement for Professional Services**

For Cochise County – Development Services Department

Dated April 16, 2026

**THIS MASTER SERVICES AGREEMENT** (Agreement) by and between Cochise County Development Service (**CLIENT**), a district chartered under the laws of the State of Arizona and having its principal place of business at 1415 Melody Lane, Building F, Bisbee, Arizona 85603, and **BEC Environmental, Inc. (BEC)**, a corporation chartered under the laws of the State of Nevada and having its principal place of business at 7241 West Sahara Avenue, Suite 120, Las Vegas, Nevada 89117, is effective as of the date of the last signature affixed hereto (“effective date”).

**CLIENT** engages **BEC** to provide professional environmental services for various environmental projects under Task Orders signed by both parties for each location and work assignment to be done within the Area, County, and State. Costs and work scope associated with projects assigned are to be consistent with the fee schedules in Attachment A and format for Task Order assignments (see sample – Attachment B). The Travel Policy and Per Diem Policy is provided as Attachment C. Cochise County Procurement Department Terms and Conditions are provided in Attachment D. Should there be inconsistency between this Agreement and the Terms and Conditions in Attachment D, the language in Attachment D will take precedence over this Agreement.

Task Orders may involve:

- Completion of a Hazardous Substance Site and/or a Petroleum Site Eligibility Determination Checklist for review and approval by EPA Region 9 and/or Arizona Department of Environmental Quality (ADEQ)
- Cleanup Planning & Regulatory Submittals
  - Remedial Action Plan (RAP) preparation (per site)
  - Analysis of Brownfield Cleanup alternatives (ABCA) preparation (per site)
  - Quality Assurance Project Plan (QAPP) preparation (per site)
  - Respond to regulatory comments (per site)
- Contractor Procurement Support for
  - Bid specification package preparation (per package)
  - Bid evaluation and recommendation memo (per procurement)
- Remediation Oversight
  - Field oversight (per day, 8-hour basis)
  - Remediation project management (per month, estimate level of effort)
  - Final cleanup report (per site)
- Closeout
  - Remediation Implementation Closeout Report (per site)
- RLF Program Support
  - Loan/subgrant technical review (per application)
  - Administrative Record setup (one-time)
  - Administrative Record maintenance (annual estimate)
  - Payment request technical review (per request)
  - EPA quarterly report support (per report)
  - Audit preparation support (per occurrence, estimated level of effort)
- Outreach & Public Participation
  - Community Relations Plan (per plan)
  - Public meeting support (per meeting)

- Information brochure development (per brochure)
- Website content development/update (per update)
- Other Environmental Services as specifically defined in Task Order assignments
  
- BEC shall not bill, and CLIENT shall not be obligated to pay any amounts in excess of the Task Order NTE unless CLIENT has provided prior written authorization (e.g., a signed Task Order amendment or Change Order) increasing the NTE. Each invoice shall include (a) labor hours by person/role and task, (b) reimbursable expenses with receipts or supporting documentation, (c) the Task Order Not-To Exceed (NTE) amount, (d) total billings to date, (e) current period billings, and (f) remaining available balance under the NTE (burn rate).

In consideration of the mutual promises herein, **CLIENT** and **BEC** agree the terms and conditions of this Agreement are the following:

## 1. BEC Responsibilities and Services

- 1.1. **Scope.** BEC will provide an estimate of costs in Task Order format (see sample - Attachment B), based on the client identified scope of work and time period in which the work must be done. After the Task Order(s) has been approved by **CLIENT** by email or in writing, **BEC** will perform the services described in the approved Task Order(s). **BEC's** obligations under this Agreement are solely for the benefit of **CLIENT** and no other party is intended to benefit or have rights hereunder.
- 1.2. **Standard of Care.** BEC shall perform the professional environmental services under this Agreement at the level customary for competent and prudent environmental professionals performing such services at the time and place where the services are provided (Standard of Care). These services will be provided by subject matter specialists (i.e. scientists and other professionals and individuals skilled in other technical disciplines, as appropriate, with any licenses or registrations required for the required services).
- 1.3. **Instruments of Service.** BEC is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of their services including reports and other services provided under this Agreement. **BEC** will provide copies of draft reports to **CLIENT** for one round of review and comment prior to finalization of the report. All final reports will be submitted electronically to **CLIENT** by **BEC** in PDF format, and where applicable, in editable/native file formats (including but not limited to Word, Excel, GIS, CAD, or other source files used to prepare the deliverables). All Deliverables shall be suitable for regulatory submission, audit review, and future use by **CLIENT**. After one round of review, BEC shall incorporate **CLIENT's** reasonable comments. Corrections required to address errors, omissions, or nonconformance with the Task Order, or to respond to regulatory agency comments, shall not be considered an additional service.
- 1.4. **Subcontractors.** Any subcontractors and outside associates or consultants to be engaged by **BEC** under this Agreement are limited to those identified in writing and approved by **CLIENT** during the performance of this Agreement.
- 1.5. **Transportation or Disposal of Hazardous Materials.** If services under this Agreement require the containerization, transportation, or disposal of any hazardous or toxic wastes, materials, or substances, **BEC** will have no authority or responsibility to act as a generator, transporter, or disposer of any hazardous or toxic wastes, materials, or substances that may be found or identified on, at, or around **BEC's** client's premises. **CLIENT** and **BEC** agree as follows:
  - 1.5.1. When required by an approved Task Order, **BEC** will assist **CLIENT** in obtaining the services of licensed hazardous materials contractors for the transportation and disposal

of all hazardous or toxic wastes, materials, or substances. **CLIENT** will contract directly for these services.

- 1.5.2. **CLIENT** will provide all required hazardous or toxic wastes, materials, or substance generator numbers, signed manifests, storage and treatment permits, and any permits or licenses required by local, state, or federal laws or regulations for the generation, transportation, storage, treatment and/or disposal of any hazardous or toxic wastes, materials, or substances.

## 2. Additional Services

- 2.1. **Scope.** Any required Additional Services will be defined subsequently by email or in writing by separate Task Order.

## 3. Client Responsibilities

Unless stated otherwise in Section 8, **CLIENT** shall do the following in a timely manner:

- 3.1. **Client Representative.** Designate a representative having authority to give instructions, receive information, define **CLIENT**'s policies, and make decisions with respect to each Task Order assignment.
- 3.2. **Task Order Assignment Criteria.** Provide all criteria and information as to **CLIENT**'s requirements for the Task Order assignment, including study objectives and constraints, space, capacity and performance requirements, and any budgetary limitations. Furnish copies of all design and construction standards which **BEC** will require to be included in the reports.
- 3.3. **Data.** Provide all available information, including previous reports and any other data in the possession of **CLIENT** relevant to the Task Order and tasks to be accomplished. Data may include (1) data prepared by others, including borings, subsurface explorations, hydrographic surveys, and laboratory tests and inspections of samples, materials and equipment; (2) appropriate professional interpretations of such data; (3) environmental assessments and impact statements; (4) property, boundary, easement, right-of way, topographic and utility surveys; (5) property descriptions, zoning, deed and other land use restrictions; and (6) other necessary special data or consultations. **BEC** may rely on the accuracy and completeness of the supplied data.
- 3.4. **Access.** Arrange for **BEC** to enter upon public and private property as necessary.
- 3.5. **Permits.** Coordinate with **BEC** regarding the furnishing of approvals and permits from governmental authorities or other entities having jurisdiction over the Task Order location and approvals from others as may be necessary for the timely completion of the Task Order tasks.
- 3.6. **Task Order Developments.** Give prompt written notice to **BEC** whenever **CLIENT** observes or otherwise becomes aware of any development that affects the scope or timing of **BEC**'s services.
- 3.7. **All Task Orders, Change Orders or Additional Services documents must be in writing and signed by both parties before they become effective/enforceable.**

## 4. Periods of Service

- 4.1. **Time of Performance.** Sections 4 and 5 anticipate the orderly and continuous progress of the Task Order assignment through assignment completion. The time of performance is the period which should reasonably be expected to be required for the completion of the Work, as defined in each Task Order assignment or otherwise mutually agreed in writing.
- 4.2. **Delays.** If Task Order assignments specify periods of time for performance of services or

specific dates by which services are to be completed and if such periods or dates are exceeded through no fault of **BEC**, the compensation specified under Section 5 shall be subject to equitable adjustment.

- 4.3. **Start of Performance.** **BEC** will provide the required services upon receipt of email or written authorization by **CLIENT** for each Task Order. If **CLIENT** provides prior written authorization by an officer of **CLIENT** before signing Task Orders, **BEC** shall be paid as if the services had been performed after both parties signed the Task Order assignment.
- 4.4. **Completion of Performance.** For the purposes of final payment under Section 5, completion of **BEC**'s services will occur upon delivery of the final report or other service deliverable as specified in each Task Order assignment, as appropriate.
- 4.5. **Force Majeure.** Neither party shall hold the other responsible for damages or delays in performance of this Agreement caused by force majeure, acts of God, or other events beyond the control of the other or the others officers, directors, owners, employees, and agents.

## 5. Compensation

- 5.1. **Basic Services.** **CLIENT** shall pay **BEC** the amount stated in invoices issued in accordance with the attached Fee Schedule (Attachment A) and each Task Order (Attachment B) for work performed and all reimbursable expenses incurred during the period covered by the invoice. Invoices are due within 30 days after the invoice date. **BEC** bills on a monthly basis for work done as of the last day of any given month. Documentation will be provided with each invoice to allow **CLIENT**'s verification of the invoiced activities.
- 5.2. **Additional Services.** **CLIENT** shall pay **BEC** for authorized Additional Services. Invoices shall be prepared in a format acceptable to **CLIENT** and issued in accordance with the Fee Schedule (Attachment A) or as otherwise mutually agreed in writing.
- 5.3. **Delay or Termination.**
  - 5.3.1. **Delays.** If **CLIENT** delays the performance of, or payment for, services under this Agreement for more than 90 days for a reason(s) other than **BEC**'s fault, **BEC** will suspend performance until it receives payment in full for undisputed services rendered and expenses incurred to the date of suspension.
  - 5.3.2. **Termination of Contract.**
    - 5.3.2.1. **Termination with Cause.** This contract may be terminated by either party upon ten (10) days written notice should the other party fail to perform in accordance with the terms of this Contract through no fault of the other. In the event of termination with cause, **BEC** shall be paid in full for all services performed previously authorized and satisfactorily performed up to the termination date.
    - 5.3.2.2. **Termination Without Cause.** This Agreement may be terminated by either party with 30 days written notice to the other party by U.S. Postal Service Certified Mail or by hand delivery of such notice to the other party. In the event of termination without cause by **CLIENT**, **BEC** shall be compensated for all services rendered and expenses incurred up to the termination pursuant to the provisions of this Agreement.
- 5.4. **Disputed Amounts.** Notwithstanding the provisions of Section 7, if **CLIENT** disputes an item(s) or amount(s) contained in an invoice, **CLIENT** agrees to pay the balance undisputed invoiced amounts to **BEC** in accordance with the Fee Schedule (Attachment A).

## 6. Health and Safety

- 6.1. **BEC** is responsible for their activities and those of their employees or agents on the job site with respect to job-site safety.
- 6.2. **IF BEC** is advised of the existence of hazardous materials or special safety requirements at the Project site, **BEC** will arrange for appropriate safety and health training at their own expense for all of their employees who may work at the site.
- 6.3. **BEC** is responsible for providing at their own expense, all personal protective clothing and equipment required for their employees to perform their work in a safe manner and in compliance with all applicable local, state and federal laws and regulations, including applicable OSHA standards.
- 6.4. **BEC** shall bear sole liability and responsibility for any damage to property or injury or death to persons in, on, or about the Project Site resulting from any willfully negligent act or omission of **BEC**, their officers, owners, employees, and agents, and shall indemnify and hold **CLIENT** harmless from and against any such liability, including attorney's fees and other costs of defense, arising from such willfully negligent acts or omissions.
- 6.5. If damage to property or injury or death to persons in, on, or about the Project Site is not the result of any negligent act or omission of **BEC**, their officers, owners, employees, and agents, **CLIENT** shall indemnify and hold **BEC** harmless from and against any such liability, including attorney's fees and other costs of defense, arising from such damage to property or injury or death.

## 7. Work Site Conditions

- 7.1. **BEC** also warrants that the materials and equipment furnished under this Agreement will be of good quality and new, and that Services will be provided in a good and workmanlike manner, consistent with that level of care and skill exercised by other professionals practicing in the same locale and under similar circumstances, and in conformance with the Agreement as well as all federal, state and local laws, rules, regulations and ordinances applicable to the performance of the services.
- 7.2. **BEC** shall daily keep the premises and surrounding area free from accumulation of waste or rubbish caused by **BEC's** Services. **CLIENT** may charge **BEC** an appropriate fee for cleanup costs if **BEC** fails to comply.
- 7.3. It is **BEC's** responsibility to fully cooperate with others present at the Project site in order to avoid conflicts, interference, or delays in the Project Schedules.
- 7.4. **CLIENT** and/or **BEC** may take whatever measures deemed necessary to mitigate damage to persons and property in the event of an emergency. If through negligence, **BEC** causes such situation **BEC** will reimburse all costs.

## 8. General Conditions

- 8.1. **Changes.** **CLIENT** may change the Basic Services, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the Agreement shall be made by email or in writing by Task Order amendment signed by both parties prior to **BEC** performing the changed services.
- 8.2. **Confidentiality.** **BEC** will hold secret and confidential all information designated by **CLIENT** as confidential (Confidential Information). **BEC** will not reveal Confidential Information to a third party unless:
  - 8.2.1. **CLIENT** consents in writing.

- 8.2.2. The information is or becomes part of the public domain.
- 8.2.3. **BEC** lawfully possessed the information before receipt from **CLIENT**.
- 8.2.4. Applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure.
- 8.2.5. Failure to disclose the information would pose an imminent and substantial threat to human health or the environment.
- 8.3. **Professional Service.** All work products produced under this agreement shall be the property of Cochise County upon payment.
- 8.4. **Disputes.** If a dispute or complaint (Dispute) arises concerning this Agreement, **CLIENT** and **BEC** will negotiate a resolution of the Dispute. Should negotiation be unsuccessful, mediation of the Dispute by a third party shall follow. Any time which elapses in attempting to resolve the Dispute through either or both negotiation and/or mediation shall extend day-for-day any applicable statute(s) of repose or limitation of actions.
  - 8.4.1. **Negotiation.** Following written notice of a Dispute, a minimum of three face-to-face meetings (or less if the Dispute is resolved) shall be held.
  - 8.4.2. **Mediation.** If negotiation is unsuccessful, a mutually acceptable third party (**Facilitator**) having expertise in the subject of the Dispute shall be engaged to mediate the Dispute. The fee and expenses of the Facilitator shall be shared equally by the parties to the Dispute. The parties may present evidence and arguments to the Facilitator. Unless the Facilitator and the parties agree otherwise, a minimum of three face-to-face meetings shall be held within the sixty-day period beginning on the date of the Facilitator's engagement.
  - 8.4.3. Following the third meeting or earlier if appropriate, the Facilitator shall report to the parties whether s/he believes the Dispute is not resolvable through mediation. At that point the parties shall elect (a) to continue mediation, (b) replace the Facilitator and continue mediation, or (c) end mediation. If the mediation is ended, the parties may adjudicate or arbitrate the Dispute.
  - 8.4.4. **Adjudication.** The laws of the State of Nevada shall control both the action and the substantive issues unless required by law to be filed in a federal district court.
- 8.5. **Indemnification.**
  - 8.5.1. **BEC** agrees to defend, indemnify and hold harmless **CLIENT**, its affiliates, officers, directors, employees and agents of each, from and against all losses, damages, liabilities and expenses, including attorney's fees, to the extent resulting from or arising out of the negligent or willful misconduct of **BEC** and **BEC**'s subcontractors.
  - 8.5.2. **CLIENT** agrees to defend, indemnify and hold harmless **BEC**, including its officers, directors, employees and agents, from and against all losses, damages, liabilities and expenses, including attorney's fees, to the extent resulting from or arising out of the negligent or willful misconduct of **CLIENT** or **CLIENT**'S employees, representatives, or other contractors.
- 8.6. **Limitation of Liability.** Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, **CLIENT** agrees that:
  - 8.6.1. **BEC**'s liability to **CLIENT** for any and all claims, damages, losses, or expenses arising out of this Agreement from any cause including, but not limited to, **BEC**'s negligence, strict liability, breach of contract or breach of warranty, shall not exceed \$10,000 or **BEC**'s total compensation under the related Task Order Assignment, whichever is less. Such Limitation of Liability shall not apply where **BEC** has been found grossly negligent or to have intentionally or willfully caused such liability.
- 8.7. **Successors.** This Agreement is binding on the successors and assigns of **CLIENT** and **BEC**. The Agreement may not be assigned in whole or in part to any third parties without the written consent of both **CLIENT** and **BEC**.

- 8.8. Independent Contractor.** BEC represents that they are a corporation and not an employee of CLIENT.
- 8.9. Notices.** Written notices may be delivered in person or by email, facsimile, or by courier. All notices shall be effective upon the date of receipt by the party. Notices shall be delivered or sent to the designated representative of the other party at the address given on the last page of this Agreement. An address may only be changed by email or written notice.
- 8.10. Applicable Law.** If applicable to the services provided under this Agreement, BEC will comply with the requirements of:
- 8.10.1. The Equal Employment Opportunity** clause in Section 202 of Executive Order 11246, as amended,
  - 8.10.2. Utilization of Small and Disadvantaged Business** Concerns (Public Law 95-507), and
  - 8.10.3. All other federal, state and local laws** and regulations or orders issued under such laws.

## 9. Special Provisions, Exhibits and Schedules

- 9.1.** This agreement is subject to the following provisions:
- 9.1.1.** Under Section 3.1, the CLIENT's representative shall be defined in each Task Order.
  - 9.1.2.** The only persons authorized to commit BEC Environmental, Inc. financially or legally are: B. Eileen Christensen, President; Richard H. Nelson, Executive Vice President; and B. Elizabeth Nelson, Chief Financial Officer (CFO).
- 9.2.** The following Schedule is attached to and made a part of this Agreement:
- 9.2.1. Fee Schedule** (Attachment A) consisting of two pages.
- 9.3. Entire Agreement.** This Agreement, including any schedules, attachments and referenced documents, is the entire agreement between CLIENT and BEC. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by CLIENT and BEC.
- 9.4. Waivers and Severability.** A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.
- 9.5. Effective Date.** This Agreement is effective as of the date shown on the first page of this agreement.
- 9.6. Execution Authority.** This Agreement is a valid and authorized undertaking of CLIENT and BEC. The representatives of CLIENT and BEC who have signed below have been authorized to do so. Both signatory parties mutually agree to treat emailed copies of this Master Services Agreement as original signatures.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

**COCHISE COUNTY – DEVELOPMENT SERVICES**

**BEC ENVIRONMENTAL, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

B. Eileen Christensen  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Principal  
\_\_\_\_\_  
Title

1415 Melody Lane, Building F  
Bisbee, Arizona 85603  
\_\_\_\_\_  
Address

7241 W. Sahara Ave., Suite 120  
Las Vegas, NV 89117  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Email Address

eileen@becnv.com  
\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

- Attachments: A. BEC and BAI Fee Schedules  
B. Sample Task Order  
C. Travel Policy and Per Diem Policy  
D. Cochise County Procurement Department Terms and Conditions

**ATTACHMENT A**

**Fee Schedules**

Cochise County - Brownfields RLF  
FEE SCHEDULE  
2026

Project Name: \_\_\_\_\_

Project #: \_\_\_\_\_

Job Title	Labor Rate
Principal / Principal Scientist	200.32
Sr Program Manager/ Sr Project Manager/ Sr Project Scientist	188.54
Sr Associate 2 /Sr Scientist 2	175.58
Sr Associate 1 /Sr Scientist 1	162.61
Program Manager 3 / Project Manager 3	162.61
Program Manager 2 / Project Manager 2	150.83
Program Manager 1 / Project Manager 1	144.94
Associate 5/ Env Scientist 5 / Grant Writer 5 / Resource Specialist 5	156.72
Associate 4 / Env Scientist 4 / Grant Writer 4 / Resource Specialist 4	144.94
Associate 3 / Env Scientist 3 / Grant Writer 3 / Resource Specialist 3/Sr Field Biologist	130.79
Associate 2 / Env Scientist 2 / Grant Writer 2 / Resource Specialist 2	119.01
Field Biologist/Authorized Desert Tortoise Biologist	111.95
Associate 1 / Env Scientist 1 / Grant Writer 1 / Resource Specialist 1	106.06
Intern 3 / Project Support 3 / Technician 3	98.98
Botanist	96.41
Jr Field Biologist/Desert Tortoise Monitor	94.27
Intern 2 / Project Support 2 / Technician 2	93.09
Intern 1 / Project Support 1 / Technician 1	87.20
Clerical 3 /Data Processing 3	75.41
Clerical 2 /Data Processing 2	67.16
Clerical 1 /Data Processing 1	61.27

1. Mileage will be charged at the current IRS rate.
2. A 15% markup will be applied to all direct expenses, with the exception of subcontractor invoices. 15% markup for subcontractor invoices will only apply to professional labor and not to pass-through costs such as permit fees, lab testing, or third-party expenses.
3. Labor fees may be subject to up to a 3.5% annual increase.
4. GIS Spatial Analyst Extension Software use is charged as a prorated fee of \$250.00 per project.
5. Overtime rates in excess of 40 hours per week for individual staff members will be at 150% of the Billing Rate, unless otherwise negotiated. No Overtime shall be used unless Cochise County has been notified of the need for overtime and has approved the use of Overtime.

8. Equipment Charges	Equipment Rate
Auger (Hand)	\$10.00 / day
GPS (Trimble Data Logger)	\$55.00/ day
Sampling/PPE Kit/Biological Equipment and Supplies	\$25.00 / each
Truck Charge \$20 per hour or \$100 per day (whichever is less)	\$20.00 / hour or \$100.00 / day

Litigation Support - In the event BEC's employees are requested by Client, compelled by subpoena or otherwise by any party to give expert or witness testimony or otherwise participate in a judicial or administrative proceeding involving the Client at any time, Client shall compensate BEC at 150% of the Billing Rate, including preparation time, and shall reimburse BEC for all out of pocket costs as provided therein.



**Schedule of Fees and Payments (2026)**

**Hourly Fees for Personnel**

Principal Engineer	\$258	Senior Staff	\$145
Principal	\$225	Staff Engineer	\$152
Associate Engineer	\$238	Staff	\$132
Associate	\$207	Water/Wastewater Operator II	\$150
Industrial Hygienist	\$196	Water/Wastewater Operator I	\$137
Senior Engineer	\$219	AutoCAD Technician	\$137
Senior	\$190	Senior Technician II	\$137
Project Engineer	\$193	Senior Technician I	\$127
Project II	\$167	Technician II	\$109
Project I	\$155	Technician I	\$86
Senior Staff Engineer	\$166	Administrative	\$93

**Consultation and Litigation**

Fees for special consultation, consulting boards, legal proceedings, expert witnesses, and services in connection with litigation are charged at a rate of 1.5 times the Hourly Fees specified above.

**ATTACHMENT B**

**Sample Task Order**

**Task Order #** \_\_\_\_

In accordance with the Master Services Agreement for Professional Services dated [Contract Date] between Cochise County Development Service (CLIENT), 1415 Melody Lane, Building F, Bisbee, Arizona 85603, and **BEC Environmental, Inc. (BEC)**, 7241 West Sahara Avenue, Suite 120, Las Vegas, Nevada 89117, the following scope of work is authorized.

**Project Number:**

**Project Name:**

**Scope:** [Detailed definition of Task Order assignments to be completed, including any special conditions or requirements.]

**Assumptions:** [Description of conditions impacting costs and measures to control those conditions.] If assumptions change, BEC must submit a written change request and obtain CLIENT approval before exceeding the NTE or changing scope/schedule.

**Schedule:** [Develop Gantt chart to monitor milestones and track workflow and dependencies, as appropriate.]

Date Assigned:

Due Date:

**Deliverables:** [Detailed description of draft and final deliverables to be provided, including format.]

CLIENT will review deliverables; deliverables are accepted upon written approval.

**Task Order Budget:** [Use the table below to provide detailed estimate of costs and resources allocated. Pull from Excel file and insert into Task Order Template.]

Work is to be done on a Time and Material Basis Not-to-Exceed [\$] without prior written authorization, in accordance with the Master Service Agreement dated March 5, 2026.

**Note:** Table below is for display only.

The table below summarizes the estimated budget for this Task Order. Billing rates shall be in accordance with the attached table, and total compensation (including reimbursables) shall not exceed the Task Order NTE without a written, and signed amendment.

Estimated Cost for Task Order No. X					
Description of Work	Vendor	Unit Rate	Quantity	Unit	Total
<i>Personnel (Consulting)</i>					
Principal	BEC	\$200.32		Hour	\$0.00
Project Manager/Env Scientist 5	BEC	\$156.72		Hour	\$0.00
Senior Engineer*	BAI	\$219.00		Hour	\$0.00
Staff Engineer*	BAI	\$156.72		Hour	\$0.00
Cultural Resources Support *	BAI	\$156.72		Hour	\$0.00
<i>BEC Equipment</i>					
Digital Camera		\$10.00		Day	\$0.00
GPS		\$0.00		Day	\$0.00
<i>Expenses</i>					
to the following:					
Travel		\$0.725		Mile	\$0.00
Equipment Cost per Day (in house and rented)					\$0.00
15% mark-up (Subconsultants subject to mark-up are denoted with an asterisk (*))					\$0.00
<b>Estimated Cost</b>					<b>\$0.00</b>

**BEC** will consider receipt of your signed Task Order as authorization to proceed.

**COCHISE COUNTY DEVELOPMENT SERVICE**

**BEC ENVIRONMENTAL, INC.**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Return one signed copy via email to:**

**Eileen@becenvironmental.com**

**ATTACHMENT C**

**Travel Policy and Per Diem Policy**

Statement of Purpose and Responsibilities

This document establishes policies governing the reimbursement of travel, entertainment and other business expenses incurred during the conduct of BEC business. It is BEC’s policy to reimburse employees for ordinary, necessary and reasonable expenses when directly related to the transaction of BEC business.

Directly related expenses are those in which there is the expectation of deriving some current or future benefit for BEC, the employee is actively engaged in a business meeting or activity necessary to the performance of the employee’s job duties, or, in the case of entertainment, there is a clear business purpose.

Employees are expected to exercise prudent business judgment regarding expenses covered by this Policy.

Reimbursement for expenses that are not in compliance with this Policy requires the prior written approval of BEC’s Chief Financial Officer (CFO).

BEC’s employees are responsible for complying with this policy. Employees submitting expenses that are not in compliance with this Policy risk delayed, partial or no reimbursement.

Documentation

Requests for reimbursement of business expenses must be submitted either on the Ajera expense form (for expenses charged to a project, including marketing and non-billable) or the BEC Expense Report (for general office expenses). Each expense shall be separately identified. Forms shall be dated and signed by the employee and approved by their supervisor.

Original receipts are required for all expenses submitted for reimbursement. Requests for exceptions to this policy should document extenuating circumstances and be approved by the CFO.

BEC complies with IRS regulations, which require all business expenses be substantiated with adequate records. This substantiation must include information relating to:

1. Amount of the expenditure
2. Business purpose of the expenditure
3. Names and the business relationships of individuals other than the employee for whom the expenditures were made.
4. Time and place of the expenditure

Requests for reimbursement lacking complete information will be returned to the requesting employee.

Reimbursement requests shall be submitted as of the last date of month, on or before the first of the following month through Ajera’s expense report module or the BEC Expense Report. Work with your supervisor to ensure expenses are assigned to the correct project and phase in Ajera’s expense report module.

**Manage**

Time & Expense  
Timesheets

**Expense Reports**

Project Time Approval  
Schedule

Project Command Center

Vendor Invoices

Reimbursement requests requiring immediate processing may be submitted anytime and for a specific period with the supervisor's and the CFO's approval.

## Approvals

NO travel or reimbursables are allowed unless pre-approved in the Task Order. All travel must be estimated and included in the Task Order budget. Reimbursables count toward the Task Order NTE and cannot exceed it without a signed change order. Reimbursables must be at actual cost with receipts. Expense reimbursement forms, together with required documentation, must be printed and submitted to the supervisor for signature approval prior to giving it to the Administrative Assistant for review. The Accounting Manager grants final approval. The CFO may approve expense reimbursement in the absence of the employee's supervisor.

The Accounting Manager is responsible for ensuring that the expenses reported are proper and reimbursable under this Policy, the expense report has been filled out accurately and the required documentation is attached.

## Reimbursable Expenses

The following are reimbursable expenses, as long as they are in compliance with the applicable provisions of this Policy, and are for business purposes (itemized receipts are required for all expenses – including lodging except as noted below):

1. Airfare, train fare, bus fare, taxicabs, and related tips (unless per diem is authorized or required)
2. Business center costs (i.e., copying, faxing, etc.)
3. Business meals and entertainment expenses (as authorized)
4. Business mileage, if using own vehicle
5. Business telephone calls
6. Charges for internet connectivity at the hotel or motel
7. Car rental expenses
8. Conference and convention fees
9. Hotel or motel charges and related tips
10. Laundry and/or dry cleaning expenses during trips in excess of five days
11. Meals, including tip
12. Tolls and parking charges
13. Other reasonable and necessary business expenses, not specifically excluded by the following section

The following expenses are **not** reimbursable:

1. Airline club dues
2. Alcohol Purchases
3. Fines or penalties
4. First class airfare
5. Barbers/hairstylists
6. Child care costs

7. Hotel room movies and other forms of personal entertainment
8. In-flight movies/refreshments
9. Luggage or briefcases
10. Meals including only company employees, unless travelling on company business or approved in advance by the CFO

No policy can anticipate every situation that might give rise to legitimate business expenses. Reasonable and necessary expenses, which are not listed above, may be incurred. Each employee and supervisor must use his/her best professional judgment in determining if an unlisted expense is reimbursable under this Policy.

### Air Travel

All employees are expected to travel coach class and are encouraged to search for the lowest available restricted but changeable fare, rather than the fully-refundable fare. Personal frequent flyer credits may be used to upgrade travel class; however, no reimbursement will be made, and no contribution recorded on behalf of the employee for the business use of frequent flyer credits.

Check with the office manager on current instructions on how to book a flight. The cost of canceling and/or rebooking of flights is not reimbursable, unless it can be shown that it was necessary or required for legitimate business reasons (such as a changed meeting date). All unused airline tickets are to be returned to the CFO promptly.

### Lodging

Prudent judgment should be used when selecting a hotel or motel. A single room with a private bath in a moderately priced business class hotel or motel is BEC's standard. When possible, locally owned lodging should be given priority. If a project requires using GSA rates, then reimbursement will be based on the GSA rate amount or the actual lodging charge (whichever is less). All lodging receipts must be turned in whether per diem is claimed or not. Credit card charge slips with totals only do not represent adequate supporting documentation.

BEC will not reimburse an employee for separate travel costs associated with his/her spouse or partner. However, the cost of a shared hotel room need not be allocated between an employee and his/her spouse or partner for purposes of this Policy.

### Rental Cars

It is expected that reservations will be made for a compact or mid-sized vehicle, depending on the type of travel and number of employees. Cruise control is encouraged when traveling out-of-town. Occasionally other vehicle types (premium, luxury, four-wheel drive, etc.) may be appropriate when deemed necessary for a project or contract, with the approval of the CFO.

Employees driving rental cars for business purposes will have liability coverage under BEC's business liability policy, so do not sign for car rental insurance when ordering or picking up the vehicle.

## Personal Vehicles

Employees who utilize personal vehicles for business purposes are required to have a valid driver's license and at least the minimum insurance coverage required by law. Mileage will be reimbursed at the currently allowable IRS rate. Miles submitted for reimbursement should be net of any personal or normal commuting miles (Total Miles – Personal and Commuting Miles = Expensed Mileage).

Primary insurance for employees who use their personal vehicles for business purposes shall be through their own personal automobile insurance policy, and employee will be responsible for any damage to the vehicle, as well as for liability.

The expenses related to gasoline consumed by personal vehicles are the responsibility of the employee. The owner/driver of the vehicle is responsible for all parking fines and moving violation tickets.

## Policy Exceptions

Generally, any exception to this policy must have the prior written approval of the employee's supervisor and the CFO. Requests for exception should document extenuating circumstances or proposed overall savings to our Clients and BEC.

### Per Diem Policy

For up to date per diem rates go to the U.S. General Services Administration website to search by city, state or ZIP code: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

Regardless of how many hours an employee works or travels on their travel days (first and last day of official travel), they will always receive 75 percent of the applicable M&IE rate.

Per diem reimbursement requirements:

- Perform official travel away from your official station, or other areas (or mileage requirements) defined by your agency
- Incur per diem expenses while performing official travel
- Be in travel status for more than 12 consecutive hours

For the first and last day of official travel, employees are authorized 75 percent of the applicable M&IE rate provided they meet the above requirements.

If a meal is provided as part of a conference or someone else purchases your meal for you, do not claim per diem for that meal on your expense report.



# COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603  
Phone: (520) 432-8390 | Fax: (520) 432-8397

## Attachment D– Terms and Conditions

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### 1.0 Cost, Payment and Pricing

#### 1.1 Taxes

The County is responsible for the payment of all applicable sales, use and transaction privilege taxes as may be required by Arizona State and its sub-divisions. The County is exempt from all Federal Excise taxes. Out-of-state vendors shall not apply sales tax to purchases made by the County, unless required by their state. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes. The Contractor shall express taxes as a separate line item on invoices submitted.

#### 1.2 Maximum Payment Amount

The County's total payment for any contract will not exceed the amount of the total contract amount, unless otherwise modified. Additionally, the County will not exceed the amount of any fiscal year purchase order, unless otherwise modified. The aggregate total of all purchase orders shall not exceed the maximum contract value. The Contractor shall not provide any goods or services above and beyond any approved contract amounts. If a Contractor provide goods and/or services above the approved contract amount, the Contractor is choosing to do so at its own risk.

#### 1.3 Payment Terms

In accordance with A.R.S. § 35-342, the County reserves the right to apply Net 30 payment terms, unless negotiated terms have been determined to be more advantageous to the County, to all invoices submitted after the contract is awarded. The County will include any relevant discount terms during the evaluation for contract award, if it is deemed to be in the best interest of the County. All payments shall comply with all requirements of A.R.S. Titles 35 and 41.

#### 1.4 Invoice Timing

In accordance with A.R.S. § 11-622, upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the County within thirty (30) days, and the County shall not pay any invoices that are not submitted within 6 months of completion of work or delivery of supplies.

### **1.5 Payment Timing**

The Contractor shall not commence any billable work or provide any material or services under this Contract until Contractor receives an executed copy of the Purchase Order (PO) or is otherwise directed to do so in writing by the County Procurement Department. The County will pay the Contractor in accordance with A.R.S. § 11-217, following the submission of itemized invoice(s), including the Contractor company name, phone, invoice number, email address, and mailing address for any services rendered or materials delivered. No payment shall be issued prior to receipt of service and/or goods and a correctly itemized invoice. Each payment request must bear written certification by an authorized County representative confirming the services or goods for which payment is requested have been performed and/or received.

### **1.6 Authorized Ordering Official**

In accordance with A.R.S. § 11-201(3), the Contractor shall not commence, nor perform work above and beyond the scope, work without receiving either a contract or amendment signed by the Cochise County Procurement Department or Board of Supervisors, or without furnishing of approved purchase order. Promises or agreements between contractor and County employees not authorized to contractually obligate Cochise County shall be considered null and void, and payments for good or services rendered under any such promises or agreements without a contract or purchase order shall not be compensated.

### **1.7 IRS W-9 Form**

In order to receive payment, the Contractor shall have a current I.R.S. W9 Form on file with the County.

### **1.8 Economic Price Adjustment**

Some contracts awarded by Cochise County shall be subject to economic price adjustment which requires the delivery of materials in order to complete services requested. The economic price adjustment will be subject to the Commercial Price Index (CPI). No economic price adjustment or negotiated amendment shall be approved for an increase higher than that fluctuation of the CPI, unless otherwise approved by the Procurement Department. If expressly allowed within the contract, the Contractor shall request a price adjustment and provide documentation of price increases.

### **1.9 Tax Indemnification**

Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

### **1.10 Availability of Funds for Current Fiscal Year**

Should the Board of Supervisors reduce the appropriations for any reason and these goods or services are not funded, the County may take any of the following actions:

- Accept a decrease in price offered by the contractor;
- Cancel the Contract; or
- Cancel the contract and re-solicit the requirements.

**1.11 Availability of Funds for the Next Fiscal Year**

Funds may not presently be available for performance under this Contract beyond the current County fiscal year. No legal liability on the part of the County for any payment may arise under this Contract beyond the current County fiscal year until funds are made available for performance of this Contract.

**1.12 Right of Offset**

The County shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the County, or damages assessed by the County concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

**1.13 Payment by the County**

Each payment obligation of the County created hereby is conditioned upon the availability of County, State, and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the County and available for the continuance of services herein contemplated, the contract period for the service may be terminated by the County at the end of the period for which funds are available. The County shall notify the Contractor at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

## **2.0 Contract Performance**

### **2.1 Arizona Law**

Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7 and the policies of the Cochise County Procurement Policy.

### **2.2 Statutes**

All parties shall comply will all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

### **2.3 Provisions Required by Law**

Each and every provision of Law and any clause or terms required by Law to be in the Contract shall be read and enforced as though it were included herein. And if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

### **2.4 Contract Order of Precedence**

In the event of a conflict in the provisions of the Contract, as accepted by the County and as they may be amended, the following shall prevail in the order set forth below, if included within the contract:

- 1.0 Special Terms and Conditions;
- 2.0 Uniform Terms and Conditions;
- 3.0 Statement or Scope of Work;
- 4.0 Specifications;
- 5.0 Attachments;
- 6.0 Exhibits;
- 7.0 Documents referenced or included in the Solicitation.

### **2.4 Relationship of Parties**

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

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.

## **2.5 Severability**

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

## **2.6 No Parole Evidence**

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

## **2.7 No Waiver**

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## **2.8 Public Records**

The Procurement Department shall establish and ensure that all documentation produced, received, and sent to any parties regarding day-to-day operations is filed and retained in accordance with the State of Arizona Department of Library, Archives and Public Records guidelines and all applicable Arizona State statutes. 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.

In any situation where the County may be awarded State or Federal funding, the guiding principles and policies of those organizations will be followed including any other sub-entity principles and policies, as applicable.

Defacing, changing, destroying or any other unauthorized alteration of contract file documentation shall result in administrative disciplinary action in accordance with Cochise County Public Policies and its sub-departments. No files or documentation shall be taken from the Procurement Department for any reason. Contract files will be made available to requesting parties after the submission of a Public Records Request

The County shall protect and hold confidential, upon a Vendor's request, any data which is considered to be proprietary or include trade secrets or personal identifiable information (PII) as determined, in writing, by the Procurement Department after it has evaluated the request from the vendor. The Vendor's request must be made at any point prior to the closing date of any solicitation.

## **2.9 Record Retention**

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the County at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

## **2.10 Audit**

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the County and, where

applicable, the State of Arizona and the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

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-contract substantially in the following form:

"The sub-contractor hereby warrants that it will at all times during the term of this CONTRACT 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 CONTRACT subjecting the sub-contractor to penalties up to and including suspension or termination of this CONTRACT."

### **2.11 Non-Discrimination**

The Contractor shall comply with State Executive Order No. 2009-09, Public Law 101-336, and 42 U.S.C. 12101-12213 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

### **2.12 Notices**

Notices to the Contractor required by this Contract shall be made by the County to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the County required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Department employee and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

### **2.13 Federal Immigration and Nationality Act**

The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the Contract. The County shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the County determine that the Contractor and/or any subcontractors be found noncompliant, the County may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.

Any breach of the CONTRACTORS 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 CONTRACT subjecting the CONTRACTOR to penalties up to and including suspension or termination of this CONTRACT. If the breach is by a sub-contractor, and the sub-contract 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-contract 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.

## **2.14 Advertising, Publishing and Promotion of Contract**

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Department.

## **2.15 Property of the County**

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the County. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the County.

## **2.16 Modifications**

This Contract is issued under the authority of the Procurement Department, delegated by the Board of Supervisors. The Contract may be modified only through a Contract amendment or modifications within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Board of Supervisors, County Administrator, or Procurement Department in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law.

Such changes, including unauthorized written Contract amendments or modifications shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

## **2.17 Contractor/Vendor Indemnification (Not Public Agency)**

The parties to this contract agree that the County, its departments, agencies, and Board of Supervisors shall be indemnified and held harmless by the Contractor for the vicarious liability of the County and/or State as a result of entering into this Contract. However, the parties further agree that the County, its departments, agencies, and Board of Supervisors shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

## **2.18 Public Agency Language Only**

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.

## **2.19 Indemnification - Patent and Copyright**

The Contractor shall indemnify and hold harmless the County against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the County of materials furnished or work performed under this Contract. The County shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

CONTRACTOR agrees to indemnify, defend, and hold harmless the COUNTY, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from

all claims, damages, losses, and expenses, including but not limited to attorney's fees, reasonable court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this CONTRACT, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of CONTRACTOR, or anyone for whose acts CONTRACTOR may be liable. COUNTY reserves the right, but not the obligation, to participate in defense without relieving CONTRACTOR of any obligation hereunder. The liability of the CONTRACTOR under this clause shall not exceed the total sum paid on behalf of CONTRACTOR by its insurers in settlement or satisfaction of claims under CONTRACTORs available insurance coverage.

## **2.20 Cancellation for Conflict of Interest**

Pursuant to A.R.S. § 38-511, the County may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511. Upon signing of the Contract, the Contractor agrees to the provision, and their understanding as if it were included within the Contract.

## **2.21 Gratuities**

The County may, by written notice, terminate this Contract, in whole or in part, if the County determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the County for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The County, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

## **2.22 Termination for Convenience**

The County reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

The failure of either party of this CONTRACT to take affirmative action with respect to any conduct of the other which is in violation of the terms of this CONTRACT shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct. The COUNTY reserves the right to terminate, with or without cause, in whole or any part of this CONTRACT due to failure of the CONTRACTOR to carry out any terms, promise or condition of this CONTRACT. If this CONTRACT is terminated, the COUNTY

shall be liable only for payment(s) for services rendered, materials accepted or both, prior to the effective date of any such termination.

### **2.23 Termination for Default**

In addition to the rights reserved in the contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Department shall provide written notice of the termination and the reasons for it to the Contractor.

Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

### **2.24 Continuation of Performance Through Termination**

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

### **2.25 Non-Appropriation**

The County may terminate any resulting contract at the end of any fiscal year, June 30<sup>th</sup>, without further liability other than payment of debt incurred during such fiscal year, should funds not be appropriated by its governing body to continue service for which the contract was intended.

### **2.26 Preparation of Specifications by Persons Other than County Personnel**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the County's needs in accordance with A.R.S. Chapter 23, Article 4. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

### **2.27 Procedures and Controls**

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.

### **2.28 Data**

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.

**2.29 Public Entity Disclaimer**

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.

**2.30 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

**2.31 Insurance and Performance and Payment Bonds**

Contractor 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 Contractor, its agents, representatives, and/or 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 Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his/her agents, representatives, employees and Contractor is free to purchase additional insurance as may be determined necessary.

**2.31.1 MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

**2.31.1.1 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

- a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor 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.
- b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

**2.31.1.2 Worker's Compensation and Employers' Liability**

Workers' Compensation Liability	Statutory	Employers'
Each Accident	\$1,000,000	
Disease – Each Employee	\$1,000,000	
Disease – Policy Limit	\$1,000,000	

- a. This requirement shall not apply when a Contractor is exempt under A.R.S. §23-901, AND when such Contractor executes the appropriate sole proprietor waiver form.

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

2.31.2.1 On insurance policies where the County of Cochise is named as an additional insured, the County of Cochise shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

2.31.2.2 The Contractors insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

2.31.2.3 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

**2.31.3 NOTICE OF CANCELLATION:** Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor’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, Contractor 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.

**2.31.4 ACCEPTABILITY OF INSURERS:** Contractor’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 Contractor from potential insurer insolvency.

**2.31.5 VERIFICATION OF COVERAGE:** Contractor shall furnish the County with certificates of insurance (valid ACORD form or equivalent approved by the County) evidencing that Contractor 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, 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.**

**2.31.6 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.

**2.3.1.7 PERFORMANCE AND PAYMENT BONDS** Performance and Payment Bonds are required for all Construction Contracts.

Performance Bonds are to be submitted to the County executed by a surety company holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance in the amount and for the duration specified in the contract.

Payment Bonds are to be submitted to the County, executed by a surety company holding a Certificate of authority to transact business in this state issued by the Director of the Department Of Insurance for the protection of all Persons supply labor and Material to the Contractor Or its subcontractors for the performance of the work required by the Contract. The Bond shall be in the amount specified in the Contract.

### **3.0 Contract Performance**

#### **3.1 Delivery**

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

#### **3.2 E-Verify Requirements**

In accordance with A.R.S. § 41-4401, the Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

#### **3.3 Ownership of Intellectual Property**

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract (“Intellectual Property”), shall be work made for hire and the County shall be considered the creator of such Intellectual Property. The agency, department, division, or Board of Supervisors of the County requesting the issuance of this contract shall own (for and on behalf of the County) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the County, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the County and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the County. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity that is not the County without the express written authorization of the agency, department, division, or Board of Supervisors of the County requesting the issuance of this contract.

#### **3.4 Facilities Inspection and Materials Testing**

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor’s processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The County shall also have the right to test, at its own cost, the materials to be supplied under this Contract.

Neither inspection of the Contractor’s facilities nor materials testing shall constitute final acceptance of the materials or services. If the County determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the County for testing and inspection.

#### **3.5 Subcontracts**

The Contractor shall not enter into a subcontract with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the County. All subcontracts shall comply with Federal and State Laws and Regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the sub-consultant were the Contractor referred to herein. The Contractor is responsible for Contract performance whether or not sub-consultants are used. The County shall not unreasonably withhold approval and shall notify the Contractor of the County’s position within 15 days of receipt of written notice by the Contractor.

### **3.6 Assignment - Delegation**

The Contractor, without prior written permission of the County shall assign no right or interest in this Contract, and no delegation of any duty of the Contractor shall be made without prior written permission of the County. The County shall not unreasonably withhold approval and shall notify the Contractor of the County's position within 15 days of receipt of written notice by the Contractor.

### **3.7 Agreement Assignment**

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.

### **3.8 Risk of Loss**

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

### **3.9 Liens**

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

### **3.10 Quality**

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the County of the services or materials, they shall be:

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for the intended purposes for which the materials are used;
- Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- Adequately contained, packaged and marked as the Contract may require; and
- Conform to the written promises or affirmations of fact made by the Contractor.

### **3.11 Fitness**

The Contractor warrants that any material supplied to the County shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

### **3.12 Nonconforming Tender**

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the County may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code or pursue any other right or remedy available to it.

### **3.13 Inspection/Testing**

Any warranties set forth in in this Contract are not affected by inspection or testing of or payment for the materials by the County.

### **3.14 Compliance with Applicable Laws**

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

### **3.15 Purchase Orders**

The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the County prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Department, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

### **3.16 Right to Assurance**

If the County, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the County's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

### **3.17 Stop Work Order**

The County may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the County after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Department shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

### **3.18 Warranties**

Contractor warrants that all material, service or construction delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material, service, or construction specified and any inspection incidental thereto by the County shall not alter or affect the obligations of the Contractor or the rights of the County under the foregoing warranties. Additional warranty requirement may be set forth in this document.

### **3.19 Licenses**

Vendors shall maintain, in current status, all Federal, State, and Local licenses and permits required for the operation of the business conducted by the vendor as applicable to the Contract.

### **3.20 Notice to Proceed**

It is agreed that the County Procurement Director will issue the Notice to Proceed with the Work to be performed under this Agreement within twenty (20) consecutive calendar days, or some other mutually agreed upon time period, after the date of the County's Purchase Order for this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

### **3.21 Guarantee**

The Contractor shall guarantee all work under this Agreement against defects of material and workmanship as referenced in the Scope of Work.

## **4.0 Legal**

### **4.1 Force Majeure**

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

Force Majeure shall not include the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract amendment or modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

### **4.2 Antitrust Violations**

The Contractor assigns to the County any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

The County maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the County any and all claims for such overcharges as to the goods or services used to fulfill the Contract.

### **4.3 Non-exclusive Remedies**

The rights and the remedies of the County under this Contract are not exclusive.

#### **4.4 Suspension or Debarment**

The County may, by written notice to the Contractor, immediately terminate this Contract if the County determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the County.

#### **4.5 Claims and Disputes**

County Contract Representative's Resolution of Claims and Disputes; Review by Procurement Director

This section relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Agreement/Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level to increase the possibility that such matters will be resolved, without the vexation of an administrative hearing process, arbitration or litigation.

All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the County Procurement Department Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

Claims by either party must be made within fourteen (14) days after the event giving rise to the claim or within fourteen (14) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the County shall continue to make payments in accordance with the Agreement/Contract.

The County Procurement Department Representative shall, within fourteen (14) days of receipt of a claim, do one of the following:

- (1) Issue a decision either rejecting or approving the claim.
- (2) Suggest an equitable compromise of the claim.
- (3) Provide a schedule to the parties indicating when they expect to be able to take action, which shall be within a reasonable time.

The County Buyer may require the submission of additional documentation from either party to facilitate a decision. In each case, the County Procurement Department Representative will submit reasons and/or documentation supporting its action and the deadline shall be extended by the time it takes to obtain a response thereto.

The parties shall have ten (10) days from the date of the County Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of a party to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If either party rejects the decision of the County Procurement Representative in writing within such ten (10) day period, the matter shall be referred to the Procurement Director for *de novo* review.

The Procurement Director shall have sixty (60) days from receipt of a written objection by the Contractor to the County Contract Representative's final decision, or such longer period as the parties may stipulate in

writing, to review the matter and issue a response in accordance with Section 15 of the Cochise County Procurement Code. During such period, the Procurement Director may require such additional documentation or testimony as deemed necessary to support his/her response.

#### **4.6 Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

#### **4.7 Certification Pursuant to A.R.S. § 35-393.01**

If Contractor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

#### **4.8 Non-Collusion**

Firms submitting proposals shall warrant that their offer is made without any previous understanding, agreement or connection with any person, firm or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action. This condition shall not apply to proposals which are submitted by firms who have partnered with others to submit a cooperative proposal that clearly identifies a primary Consultant and the associated sub-consultant(s).

#### **4.9 Protests and Appeals**

In accordance with Section 15 of the Cochise County Procurement Policy Manual, any actual or prospective Contractor or offeror who is aggrieved in connection with the solicitation or award of a contract may appeal to the Procurement Director. The protest shall be submitted in writing to the Procurement Director within five (5) working days after such aggrieved person or company knows, or should have known, of the facts giving rise thereto.

#### **4.10 Contract**

The Contract shall be based upon the solicitation issued by the County and bid/offer submitted by the Contractor in response to the solicitation. The bid/offer shall substantially conform to the terms; conditions and other requirements set forth with the rest of the solicitation, the contract, and any attachments to either document. The County reserves the right to clarify any contractual terms with the concurrence of the Contractor. However, any substantial non-conformity in the bid/offer shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the County and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

#### **4.11 Legal Remedies**

If the Contractor and the County are unable to mutually resolve disputes arising under this contract, all disputes arising under or relating to this Contract shall be settled by binding 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.

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.

If the CONTRACTOR and the COUNTY are unable to mutually resolve disputes arising under this CONTRACT, all disputes arising under or relating to this CONTRACT shall be settled by binding 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 the COUNTY can mutually agree upon an Arbitrator, that Arbitrator shall be selected. If not, the CONTRACTOR and the COUNTY shall each select an Arbitrator and those two Arbitrators shall select a third Arbitrator (or the CONTRACTOR and 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.

This CONTRACT shall be governed by, and the COUNTY and CONTRACTOR or 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.

#### **4.12 Rights and Remedies**

No provision in this document or in the Contractor's offer shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release either party from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.