



Board of Supervisors Memorandum

June 20, 2017

No-Cost Cooperative Agreement with the National Park Service: Vegetation Protocol for Pima County Ecological Monitoring Program

Background

The Pima County Multi-species Conservation Plan (MSCP) and the issuance to Pima County by the US Fish & Wildlife Service (USFWS) of the Endangered Species Act Section 10 Permit were finalized in July 2016. Since then, Sustainability and Conservation staff have been implementing the Ecological Monitoring Program (EMP), a key requirement of the Plan. The EMP, which consists of five elements: species, habitat, threats, landscape pattern, and climate, will tell us if the habitat values of our open-space parcels are changing over time; and if changes are occurring, it will provide guidance for management actions to reverse negative trends. This ability to observe change and inform management actions is a requirement of all Section 10 permits.

Habitat monitoring is a key element of the EMP and was the focus of much planning, including a Section 6 planning grant from the U.S. Fish and Wildlife Service in 2008. That planning effort identified vegetation monitoring as a critical element of the EMP. Since then, County staff have been investigating options and opportunities for an approved vegetation monitoring protocol that would achieve a host of objectives such as the ability to accurately detect changes in perennial vegetation and soils, minimize observer bias, and have application over broad geographic areas.

This discovery process has led staff to recommend use of an established vegetation and soils monitoring protocol that was extensively developed and tested by the Tucson-based Sonoran Desert Inventory and Monitoring Network (SODN) of the National Park Service (NPS). The protocol is currently being implemented on NPS and USFWS management units throughout southern Arizona. For Pima County, adoption of the protocol has many advantages:

- The protocol is already developed, thereby saving the County time and money. Included in the protocol "package" are a database and standard operating procedures that minimize errors and ensure data integrity.
- It allows comparisons to other areas. While knowing if the conditions on County lands are changing, it is also very helpful to know if other, non-County lands are changing in the same way. The protocol is currently being implemented at Saguaro National Park, Buenos Aires National Wildlife Refuge, Organ Pipe Cactus National Monument, and other parks and preserves in our region.
- It provides collaborative opportunities. Coordination with the NPS offers potential opportunities for collaboration on syntheses and potential funding sources for additional work.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **No-Cost Cooperative Agreement with the National Park Service: Vegetation Protocol
for Pima County Ecological Monitoring Program**
June 20, 2017
Page 2

The application of the protocol to County lands will entail establishment of approximately 100 plots to be monitored on most lands that Pima County owns and leases. Each year, approximately 20 plots will be surveyed and each plot would be revisited every 5 years.

Sustainability and Conservation staff investigated a number of options for completing this work on County lands. The anticipated approach is twofold. First, for Board of Supervisor's consideration is a Memorandum of Understanding (MOU) for Pima County to gain access to NPS technical expertise and tools such as a database. The MOU highlights the mutual goals and benefits of the partnership between Pima County and the NPS but does not result in any costs to Pima County.

With the approval of the NPS MOU, a contract with the Tucson Audubon Society (TAS) is also being sought in a separate Agreement to help perform the fieldwork. TAS has both the technical capability and experience in carrying out the NPS protocol and has been implementing this work for the NPS on various preserves and parks for the last two years.

The long-term monitoring of important County resources such as soils and vegetation has long been a goal of the County and our EMP. The partnership with the NPS and contract with the TAS represents an efficient use of our resources while also leveraging established and successful efforts in our region. The result will be an inter-organization effort that will allow for the assessment of Pima County lands in a broader spatial context. This approach will provide more informed and contextual land management decisions.

Recommendation

I recommend the Board of Supervisors approve the attached Cooperative Agreement with the National Park Service, which will enable Pima County to use an approved vegetation monitoring protocol and interagency sharing of comparative data.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/anc – June 1, 2017

Attachment

c: Linda Mayro, Director, Office of Sustainability and Conservation

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|--|---------------------|
| <p>PIMA COUNTY DEPARTMENT OF Sustainability & Conservation</p> <p>PROJECT: Cooperative Agreement to Collaborate on Conservation in Pima County</p> <p>CONTRACTOR: National Park Service</p> <p>TERM: Five (5) Years</p> <p>AMOUNT: No Cost</p> <p>FUNDING: N/A</p> | <p>(STAMP HERE)</p> |
|--|---------------------|

**COOPERATIVE AGREEMENT
BETWEEN NATIONAL PARK SERVICE AND PIMA COUNTY
TO COLLABORATE ON CONSERVATION IN PIMA COUNTY, ARIZONA**

1. **Parties; Effective Date.** This Cooperative Agreement (“**Agreement**”) is entered into between PIMA COUNTY (“**County**”) a body politic and corporate of the State of Arizona, acting through the Chair of the Board of Supervisors; and the NATIONAL PARK SERVICE (“**NPS**”), an agency of the United States Department of the Interior, acting through the National Park Service’s Sonoran Desert Network Inventory and Monitoring Program (“**SODN**”). Throughout this agreement, County and NPS may be referred to collectively as the “**Parties**.” This Agreement shall be effective on the date it is signed by both the County and NPS (the “**Effective Date**”).

2. Background and Purpose

2.1. NPS was created in 1916 by the National Park Service Organic Act (16 U.S.C. 1 § 1), which established and defined the mission of the NPS including to “conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

2.2. County and NPS may enter into agreements with one another for joint or cooperative action pursuant to Arizona Revised Statutes §§11-951 through 11-954.

2.3. County and NPS entered into an Agreement in 2000 to develop the Sonoran Desert Conservation Plan, a comprehensive, County-wide plan for natural and cultural resource conservation, which expired in July 2016 with the signing of the

federal permit issued to County under Section 10 of the Endangered Species Act (the "Section 10 Permit").

- 2.4. The Section 10 Permit obligates County to implement the County's Multi-Species Conservation Plan (MSCP), a key component of the Sonoran Desert Conservation Plan addressing compliance with the Endangered Species Act.
- 2.5. County has agreed to monitor and detect potentially harmful and ecologically significant changes early enough to implement management practices that reverse or prevent long-term degradation of MSCP species and their habitats.
- 2.6. The United States Congress passed the NPS National Parks Omnibus Management Act of 1998 (P.L. 105-391), with the intent to create an inventory and monitoring program to be used "to establish baseline information and to provide information on the long-term trends in the condition of National Park System resources."
- 2.7. To implement this Act, the Sonoran Desert Network Inventory and Monitoring Program (SODN) was developed and is being implemented in eleven (11) parks in southern Arizona and New Mexico and two (2) specifically in Pima County (Saguaro National Park and Organ Pipe Cactus National Monument).
- 2.8. The SODN has spent fifteen (15) years developing, testing, and employing monitoring protocols and databases that have been applied on NPS lands and on United States Fish and Wildlife Service (USFWS) refuges in southern Arizona.
- 2.9. County, as part of the MSCP, has agreed to implement this tested monitoring program developed by SODN on a suite of County-owned and managed lands.

3.0. NOW THEREFORE, County and NPS agree as follows:

- 3.1. **Purpose** - This Agreement sets forth the responsibilities of the parties for exchange of in-kind services, exchange of data, and to address legal and administrative matters among the parties.

3.2. Definitions

3.2.1. County-managed conservation lands: Those County-owned or managed lands that are subject to monitoring under the Section 10 Permit.

3.2.2. Protocol: the soils and vegetation monitoring methodology developed and implemented by the NPS SODN.

3.3. Terms and Extension/Renewal

3.3.1. This agreement will be effective on the date of final signature and will continue in effect for five (5) years thereafter or until terminated in accordance

with Section 3.4 below. At the conclusion of the 5-year term this agreement may be renewed or extended by written agreement of the Parties. Any modification or time extension of this Agreement shall be by formal written amendment and executed by the parties hereto.

3.4. Termination

3.4.1. Either Party may terminate this Agreement upon sixty (60) days advance written notice.

3.5. Costs

3.5.1. Nothing in this Agreement requires any transfer of funds from County to NPS, or from NPS to County.

4.0. Scope of Work

4.1. The NPS agrees to:

4.1.1 Provide the County or its contractors full access to the Protocol and associated database for the purposes of entering, storing, and retrieving SODN data collected on County-owned or leased lands.

4.1.2. Provide necessary staffing to carry out all aspects of the Protocol on County lands.

4.1.3. Within its lawful methods of financing provide for payment of the costs and expenses of its obligations arising each year under this Agreement from current annual budgeted funds for that year.

4.1.4. Notify County if staffing resources have materially changed after March 1st of each year.

4.1.5. Assist County, as time and resources allow, with data analysis and reporting including establishing sample sizes and relevance of the data.

4.1.6. Allow the use of SODN equipment to carry out the protocol on County-owned or managed lands.

4.1.7. Schedule annual summer and fall surveys on NPS lands so as to assure that the number of plots visited each year on County lands is sufficient and that the timing is appropriate for to meet the County's objectives. The number and timing of plots on County land will be mutually agreed to prior the annual field season.

4.1.8. Provide training to County staff on how to carry out the Protocol.

4.1.9. Provide a copy of each annual SODN report to County.

4.2. County agrees to:

- 4.2.1. Provide reciprocal staffing to carry out all aspects of the Protocol to work with NPS staff and fully offset all aspects of the SODN monitoring protocol being carried out on County-owned or managed lands including staff time, mileage, and equipment. County's field staffing will also offset the value of depreciation of NPS equipment such as laptop computers or tablets used for monitoring on County lands. The amount of County staffing needed to offset NPS staffing will be determined prior to March 1st of each calendar year for surveys starting after July 1 of that year.
- 4.2.2. Within its lawful methods of financing provide for payment of the costs and expenses of its obligations arising each year under this Agreement from current annual budgeted funds for that year.
- 4.2.3. Provide the SODN with maps, necessary keys, and access directions to each long-term monitoring plot. Maps for each field season will be provided prior to March 1st of each calendar year for surveys starting after July 1 of that year.
- 4.2.4. Allow SODN staff overnight access to County-owned and managed lands for the purposes of carrying out the protocol.

4.3. The Parties further agree to:

- 4.3.1. Share data—collected using the SODN protocol—with the other party without special request. Sensitive data such as the location of federally protected species or cultural resources will be excluded from this requirement.
- 4.3.2. Allow staff from both Parties to participate in field surveys to ensure consistent data collection.
- 4.3.3. Advise each other regarding park and conservation lands planning or activities that may affect each party's conservation responsibilities.
- 4.3.4. Identify and carry out mutually beneficial management and monitoring activities on the Parties' respective conservation lands for the purposes of protecting species and their habitats, conserving scenery, protecting natural and historic objects, and detecting long-term ecological change.

5.0. Property or Equipment Utilization. Unless otherwise agreed to in writing by the Parties, any property furnished by one party to the other will remain the property of the furnishing party.

6.0 Designated Representatives and Notice. All notices and other written communications regarding this agreement will be sent via personal delivery or by first-class mail for the following designated representative of the Party:

If to the County:

Director, Pima County Office of Sustainability & Conservation
Public Works Building
201 N. Stone Ave, 6th Floor
Tucson, AZ 85701

If to SODN.NPS:

John A. Hubbard, Network Program Manager
Inventory and Monitoring Program
National Park Service-Sonoran Desert Network
12661 E. Broadway Blvd.
Tucson, AZ 85748

7.0. Public Information. Pursuant to A.R.S. § 39-121 et seq., all information provided to County is subject to release and/or review by the general public excepting sensitive data such as the location of endangered species and cultural resources.

8.0. Worker's Compensation. For the purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

9.0. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between County and NPS employees, or between NPS and any County employees or County agents. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and incomes taxes for itself or any of its employees.

10.0. Availability of funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. treasury. The parties acknowledge that NPS will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that

agency affirmatively acts to commit to such expenditures as evidenced in writing. The parties acknowledge that County's obligations under this agreement are limited by A.R.S. §42-17106. In the event of such cancellation, the cancelling party shall have no further obligation than for reciprocal services rendered prior to cancellation.

11.0. Mutual Indemnification

11.1. 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.

11.2. Pima County shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless NPS, any jurisdiction issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Pima County's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

12.0. Applicable Laws. The Parties shall comply with all federal, state and local laws, rules, and regulations, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the Parties on County-managed conservation lands, the performance of this Agreement, and any disputes hereunder. Any action relating to activities on County-managed lands shall be brought in an Arizona court in Pima County provided that nothing herein shall be interpreted as an express or implied waiver of either party's sovereign immunity.

- 13.0. ADA Compliance.** The Parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 14.0. Severability.** Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.
- 15.0. Non-Discrimination.** Both Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this agreement as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 16.0. Third Party Beneficiaries.** Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement does not create any right or interest in the public, or any member thereof, as a third party beneficiary, nor does it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties remain as imposed under existing Federal or State law.
- 17.0. Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
- 18.0. Entire Agreement.** This document constitutes the entire Agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the date written below.

PIMA COUNTY

Chair, Board of Supervisors

Date

NATIONAL PARK SERVICE



Authorized Officer Signature

John A. Hubbard, NEMO Program

Printed Name and Title

MANAGER

5/23/17

Date

ATTEST

Clerk of Board

Date

APPROVED AS TO FORM



Deputy County Attorney **TOBIN ROSEN**

5/25/17

Date

APPROVED AS TO CONTENT



Department Head

5/23/2017

Date