



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: October 18, 2016

or Procurement Director Award

**Contractor/Vendor Name (DBA):** Arizona Land and Water Trust, an Arizona Nonprofit Corporation ("ALWT").

**Project Title/Description:**

ALWT will be a third party to Master Agreements between Pima County ("County") and Pima County Flood Control District ("District") restricting use of certain County and District properties ("the Restricted Properties").

**Purpose:**

The Endangered Species Act Section 10(a)(1)(B) permit ("Section 10 Permit") for the Pima County Multi-Species Conservation Plan requires perpetual legal protection of the Restricted Properties that will be used to mitigate impacts caused by County and private sector activities under the Section 10 Permit. As part of a separate, but related, action before the Boards of County and District, Restrictive Covenants between the District and County have been proposed to restrict future land use and ensure mitigation and conservation values are maintained. The Restrictive Covenants designate ALWT as third-party beneficiary with the right (but not the obligation) to enforce the terms of the Restrictive Covenants.

ALWT is a local entity experienced in land management whose staff and Board are familiar with many of the County and District lands identified as mitigation and conservation land. They have experience in protecting conservation values and understand the range of purposes for which these lands have been acquired. They have acted as a land trust for various private property owners in southern Arizona.

This Service Agreement provides funding from District and County to perform the work identified in the attached scope of work required of ALWT pursuant to the Covenants. The Service Agreement is funded separately by both District and County.

**Procurement Method:**

Direct select (sole source) for general services

**Program Goals/Predicted Outcomes:**

ALWT can ensure the public trust is upheld with regard to the Covenants preventing future incompatible uses of the Restricted Properties.

**Public Benefit:**

ALWT will periodically review District and County lands with regard to prohibiting incompatible uses of the Restricted Properties to ensure their mitigation and conservations values are maintained.

**Metrics Available to Measure Performance:**

Biennial property inspection reports and investigations of potential violations of the Covenants will be provided to ALWT. ALWT will provide an evaluation biennially or as needed confirming the status of the lands as reported by the County.

**Retroactive:**

No.

To: CoB 10-3-16 (3)  
Ver. 1  
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Procure Dept 09/30/16 PM04:23

**Original Information**

Document Type: CT Department Code: FC Contract Number (i.e.,15-123): 17\*130

Effective Date: 10/18/2016 Termination Date: 10/17/2021 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$ Not to exceed 50,000  Revenue Amount: \$ -0-

Funding Source(s): Flood Tax Levy

Cost to Pima County General Fund: Not to exceed \$50,000

Contract is fully or partially funded with Federal Funds?  Yes  No  Not Applicable to Grant Awards

Were insurance or indemnity clauses modified?  Yes  No  Not Applicable to Grant Awards

Vendor is using a Social Security Number?  Yes  No  Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e.,15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Expense  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

Contact: Suzanne Shields

Department: Flood Control District

Telephone: 520-724-4681

Department Director Signature/Date: Suzanne Shields 9/29/16

Deputy County Administrator Signature/Date: John W. Bul 9/29/16

County Administrator Signature/Date: C. R. Mulberry 9/30/16  
(Required for Board Agenda/Addendum Items)

<p><b>PIMA COUNTY DEPARTMENT Flood Control District</b></p> <p><b>PROJECT: Pima County Restrictive Covenants for MSCP and Non-MSCP Conservation Lands</b></p> <p><b>CONTRACTOR: Arizona Land and Water Trust</b></p> <p><b>AMOUNT: \$50,000</b></p> <p><b>FUNDING: Flood Control Tax Levy</b></p>	<div style="border: 2px solid red; padding: 5px; text-align: center;"> <p><b>CONTRACT</b></p> <p>NO: <u>CT-FC-17-130</u></p> <p>AMENDMENT NO. _____</p> <p><small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small></p> </div> <p>(STAMP HERE)</p>
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**GENERAL SERVICES CONTRACT**

THIS CONTRACT entered between Pima County Flood Control District, a body politic and corporate of the State of Arizona, hereinafter called DISTRICT; and Arizona Land and Water Trust, hereinafter called CONTRACTOR.

**WITNESSETH**

WHEREAS, DISTRICT requires the services of a CONTRACTOR to provide consultant services to ensure the restrictive covenants on DISTRICT MSCP mitigation lands and DISTRICT non-MSCP conservation lands are maintained; and

WHEREAS, CONTRACTOR is the most qualified entity to provide these services because of their staff and Board of Directors' knowledge of DISTRICT conservation lands and was selected through a direct select process.

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE 1 - TERM AND EXTENSION/RENEWAL/CHANGES**

This Contract, as awarded by the Pima County Board of Directors, commences on October 18, 2016 and terminates on October 17, 2021, unless sooner terminated or further extended pursuant to the provisions of this Contract.

Any modification or extension of the contract termination date will be by formal written amendment executed by the parties hereto.

Amendments to the Contract must be approved by the Board of Directors, as required by the Pima County Procurement code, before any work or deliveries under the Amendment commences.

**ARTICLE 2 – SCOPE OF SERVICES**

This Contract establishes the agreement under which CONTRACTOR will provide DISTRICT with products and services in accordance with the attached Exhibit A: Scope of Services.

CONTRACTOR will provide DISTRICT the goods and services as defined in this Contract. All goods and services will comply with the requirements and specifications as called for in this Contract and Scope of Services regarding Restrictive Covenants for DISTRICT MSCP Mitigation Lands and DISTRICT Non-MSCP Conservation Lands; these documents are incorporated into the Contract the same as if set forth in full herein.

### **ARTICLE 3 – COMPENSATION AND PAYMENT**

In consideration for the goods and services specified in this Contract, DISTRICT agrees to pay CONTRACTOR up to \$10,000 per year for each year of the five year term, for a total amount not to exceed fifty thousand dollars (\$50,000). Pricing for work or products/materials will be as set forth in Exhibit B: Consultant Rate Schedule for ALWT as Beneficiary, DISTRICT Restrictive Covenants for MSCP and non-MSCP Conservation Lands.

Although State and City sales tax may not be fully or accurately defined on an order, they will be paid when they are DIRECTLY applicable to DISTRICT and invoiced as a separate line item. Such taxes should not be included in the item unit price.

CONTRACTOR will provide detailed documentation in support of payment requests. CONTRACTOR must bill DISTRICT within one (1) month after the date on which CONTRACTOR'S right to payment accrues (the "Payment Accrual Date"), which, unless Exhibit B specifically provides otherwise, is the date goods are delivered, services are performed, or costs are incurred. Invoices must assign each amount billed as shown on Exhibit B and list each Payment Accrual Date. DISTRICT may refuse to pay any amount billed in an untimely manner, and will refuse to pay any amount billed more than six months after the Payment Accrual Date, pursuant to A.R.S. § 11-622(C).

Pricing will remain firm during the term of the contract. Price increases will only be considered in conjunction with a renewal of the Contract. In the event that economic conditions are such that CONTRACTOR desires unit price increases upon renewal of the Contract, CONTRACTOR will submit a written request to DISTRICT with supporting documents justifying such increases at least ninety (90) days prior to the termination date of the Contract. Unit Prices will include compensation for CONTRACTOR to implement and actively conduct cost and price control activities. DISTRICT will review the proposed pricing and determine if it is in the best interest of DISTRICT to renew or extend the Contract as provided for in Article I of this Contract.

CONTRACTOR will not provide goods and services in excess of the Exhibit A Line Item and Contract Amounts without prior authorization by an amendment executed by DISTRICT. Goods and Services provided in excess of Line Item or Contract Total Amounts without prior authorization by fully executed amendment will be at CONTRACTOR'S own risk.

For the period of record retention required under Article 21, DISTRICT reserves the right to question any payment made under this Article and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

### **ARTICLE 4 - INSURANCE**

Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The DISTRICT in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

#### **4.1 Insurance Coverages and Limits:**

- 4.1.1 **Commercial General Liability (CGL):** Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.
- 4.1.2 **Business Automobile Liability:** Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.

- 4.1.3 **Workers' Compensation (WC) and Employers' Liability:** Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers' Compensation statutory coverage is compulsory for employers of one or more employees.

Note: The Workers' Compensation requirement does not apply if Contractor is exempt under A.R.S. § 23-901, and has executed the appropriate Pima County Sole Proprietor (Independent Contractor) Waiver form.

**4.2 Additional Coverage Requirements:**

- 4.2.1 **Claims Made Coverage:** If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 4.2.2 **Insurer Financial Ratings:** Coverage must be placed with insurers acceptable to the DISTRICT with A.M. Best rating of not less than A- VII, unless otherwise approved by the DISTRICT.
- 4.2.3 **Additional Insured:** The General Liability policy must be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the DISTRICT and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 4.2.4 **Waiver of Subrogation:** Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of DISTRICT and its Agents for losses arising from work performed by or on behalf of the Contractor.
- 4.2.5 **Primary Insurance:** The Required Insurance policies, with respect to any claims related to this Contract, must be primary and must treat any insurance carried by DISTRICT as excess and not contributory insurance. The Required Insurance policies may not obligate the DISTRICT to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
- 4.2.6 **Subcontractors:** Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by DISTRICT, appropriate insurance certificates for each subcontractor. Contractor must obtain DISTRICT's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

**4.3 Verification of Coverage:**

- 4.3.1 Insurer or Broker of Contractor must evidence compliance with the Insurance Requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include:
- The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate,
  - A notation of policy deductibles or SIRs relating to the specific policy, and
  - Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the DISTRICT and its Agents.
- 4.3.2 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Contract. A renewal certificate must be provided to DISTRICT not less than 15 days prior to the policy's expiration date to include

actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the Required Insurance, or to provide evidence of renewal, is a material breach of this Contract.

4.3.3 DISTRICT reserves the right to, at any time, require complete copies of any or all Required Insurance policies.

4.3.4 Cancellation Notice: Contractor will not permit or allow its insurance policies and endorsements to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days' advance written notice from the Contractor to the DISTRICT of the change to the policy(ies). Contractor must provide written notice to DISTRICT within two (2) business days of Contractor's receipt of notice from any insurer of any of the foregoing events. For cancellation of non-payment, Insurer must provide DISTRICT with written notice ten (10) days prior to cancellation of policy.

#### **4.4 Approval and Modifications:**

The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the DISTRICT's failure to obtain a required insurance certificate or endorsement, the DISTRICT's failure to object to a non-complying insurance certificate or endorsement, or the DISTRICT's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

### **ARTICLE 5 –INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless DISTRICT, and its departments, districts, officials, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (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 Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors, excluding any claim arising from any allegation that Contractor has failed to enforce any MSCP Master Covenant term or condition. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of 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 in whole or in part from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all indemnified Claims set forth above. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor. The foregoing provision does not supersede the indemnity obligations of Pima DISTRICT set forth in any MSCP or non-MSCP Master Covenant in favor of Contractor, and in the event of any conflict between the terms of this Article 5 and the terms of any indemnity or other provisions in any MSCP or non-MSCP Master Covenant, the terms in the MSCP or non-MSCP Master Covenant will control.

### **ARTICLE 6 - COMPLIANCE WITH LAWS**

CONTRACTOR will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this contract require a license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. The laws and regulations of the State of Arizona govern the rights, performance and disputes of and between the parties. Any action relating to this Contract must be brought in a court of the State of Arizona in Pima County.

Any changes in the governing laws, rules, and regulations during an agreement apply, but do not require an amendment or revisions.

**ARTICLE 7 - INDEPENDENT CONTRACTOR**

The status of the CONTRACTOR is that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR'S officers, agents or employees will be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR is responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold DISTRICT harmless from any and all liability which DISTRICT may incur because of CONTRACTOR'S failure to pay such taxes. CONTRACTOR is solely responsible for program development and operation.

**ARTICLE 8 - SUBCONTRACTOR**

CONTRACTOR will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract creates any obligation on the part of DISTRICT to pay or see to the payment of any money due any subcontractor, except as may be required by law.

**ARTICLE 9 - ASSIGNMENT**

CONTRACTOR may not assign its rights to this Contract, in whole or in part, without prior written approval of the DISTRICT. DISTRICT may withhold approval at its sole discretion, provided that DISTRICT will not unreasonably withhold such approval.

**ARTICLE 10 - NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein **including flow down of all provisions and requirements to any subcontractors**. During the performance of this contract, CONTRACTOR will 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.

**ARTICLE 11 - AMERICANS WITH DISABILITIES ACT**

CONTRACTOR will 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.

**ARTICLE 12 - AUTHORITY TO CONTRACT**

CONTRACTOR warrants its right and power to enter into this Contract. If any court or administrative agency determines that DISTRICT does not have authority to enter into this Contract, DISTRICT will not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this Contract.

**ARTICLE 13 - FULL AND COMPLETE PERFORMANCE**

The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

**ARTICLE 14 - CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

**ARTICLE 15 - TERMINATION**

DISTRICT reserves the right to terminate this Contract at any time and without cause by serving upon CONTRACTOR thirty (30) days advance written notice of such intent to terminate. In the event of such termination, DISTRICT'S only obligation to CONTRACTOR will be payment for services rendered prior to the date of termination.

This Contract may be terminated at any time without advance notice and without further obligation to the DISTRICT when CONTRACTOR is found by DISTRICT to be in default of any provision of this Contract.

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining DISTRICT or other public entity obligations under this Contract. In the event of such termination, DISTRICT will have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.

**ARTICLE 16 - NOTICE**

Any notice required or permitted to be given under this Contract will be in writing and will be served by personal delivery or by certified mail upon the other party as follows:

DISTRICT:  
Suzanne Shields, Director  
Pima County Flood Control District  
201 N. Stone Ave.  
Tucson, AZ 85701

CONTRACTOR:  
Liz Petterson, Executive Director  
Arizona Land & Water Trust  
3127 N. Cherry Avenue  
Tucson, AZ 85719  
520-577-8564 (PH)  
520-577-8574 (FAX)

**ARTICLE 17 - NON-EXCLUSIVE CONTRACT**

CONTRACTOR understands that this Contract is nonexclusive and is for the sole convenience of DISTRICT. DISTRICT reserves the right to obtain like services from other sources for any reason.

**ARTICLE 18 - OTHER DOCUMENTS**

CONTRACTOR and DISTRICT are entering into this Contract based on a direct select process and information included in the Restrictive Covenants placed on County and Flood Control District lands identified as MSCP Mitigation lands and Non-MSCP Conservation Lands, and have relied upon information provided in the CONTRACTOR'S consultant rate schedule, and on other information and documents submitted by CONTRACTOR. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract.

**ARTICLE 19 - REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.



## **ARTICLE 20 - SEVERABILITY**

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

## **ARTICLE 21 - BOOKS AND RECORDS**

CONTRACTOR will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of DISTRICT.

In addition, CONTRACTOR will retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

## **ARTICLE 22 – PUBLIC INFORMATION**

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to this solicitation that CONTRACTOR reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CONTRACTOR prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., DISTRICT will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release will not be counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

DISTRICT will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor will DISTRICT be in any way financially responsible for any costs associated with securing such an order.

## **ARTICLE 23 – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

CONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR will further ensure that each subcontractor who performs any work for CONTRACTOR under this contract likewise complies with the State and Federal Immigration Laws.

DISTRICT has the right at any time to inspect the books and records of CONTRACTOR and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONTRACTOR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONTRACTOR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CONTRACTOR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

CONTRACTOR will advise each subcontractor of DISTRICT'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that DISTRICT may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article will be the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR's approved construction or critical milestones schedule, such period of delay will be excusable delay for which CONTRACTOR will be entitled to an extension of time, but not costs.

#### **ARTICLE 24- GRANT COMPLIANCE**

Not Applicable

#### **ARTICLE 25 – ISRAEL BOYCOTT CERTIFICATION**

Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the DISTRICT up to and including termination of this Contract.

#### **ARTICLE 26 - 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. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

**(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 FLOOD CONTROL DISTRICT**

**CONTRACTOR**

\_\_\_\_\_  
Chair, Board of Directors

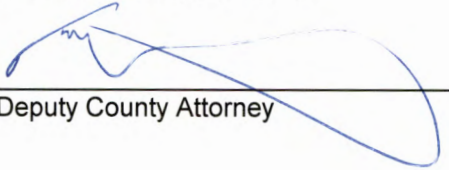
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Date

ATTEST

\_\_\_\_\_  
Clerk of Board

\_\_\_\_\_  
Date

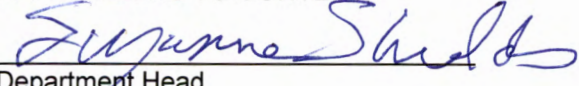
APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy County Attorney

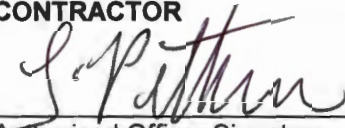
Tobin Rosen  
Print DCA Name

9/27/16  
Date

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
Department Head

9/27/16  
Date

  
\_\_\_\_\_  
Authorized Officer Signature

Liz Peterson, Exec. Dir.  
Printed Name and Title

9/27/16  
Date

## Exhibit A

### Scope of Services for Arizona Land and Water Trust as Beneficiary For Pima County Restrictive Covenants on MSCP and Non-MSCP Conservation Lands

#### Office of Sustainability & Conservation

Pima County (County) and the Regional Flood Control District (District) have identified open space lands to be protected for the Multi-Species Conservation Plan (MSCP) as well as other lands (Non-MSCP) with important natural and cultural resources. In order to preserve and protect these lands the County and District have developed restrictive covenants which will be recorded for these lands upon approval by the Board of Supervisors. As part of the restrictive covenants the Arizona Land and Water Trust (ALWT) has been identified as the third party beneficiary to provide oversight of compliance with the recorded covenants.

#### Services:

1. As the beneficiary, ALWT would review all reports provided by the County and District and determine if a violation of the terms of the covenant occurred and if corrective action is necessary.
2. If the event of any action that may constitute a violation of the terms of the MSCP Master Covenant or non-MSCP Master Covenant, Beneficiary shall determine, in its reasonable discretion, whether to take any action to enforce the terms of this MSCP Master Covenant.
3. In the event that County/District desires to take action with respect to a Restricted Property that may constitute a violation of this MSCP Master Covenant or non-MSCP Master Covenant, County/District will obtain Beneficiary's prior approval of such action, and Beneficiary shall respond to any such request from County in a timely manner.
4. In the event ALWT elects to enforce the terms of the MSCP Master Covenant or non-MSCP Master Covenant, ALWT may consult experts to assist in determining both whether or not there is a violation and appropriate remedial action.
5. ALWT may retain counsel if necessary in connection with enforcement of the terms of the MSCP Master Covenant or non-MSCP Master Covenant. ALWT, County, and District understand that the Arizona Center for Law in the Public Interest may be willing, but has not obligated itself, to provide no-cost legal services to ALWT in connection with enforcement of the terms of the MSCP Master Covenant or non-MSCP Master Covenant. In the event ALWT determines it is necessary to retain counsel in connection with enforcement of the terms of the MSCP Master Covenant or non-MSCP Master Covenant, ALWT will make reasonable efforts to obtain no-cost legal services in connection with enforcement of the terms of the MSCP Master Covenant or non-MSCP Master Covenant, either from the Arizona Center for Law in the Public Interest or otherwise.

#### Deliverables:

1. Prepare written evaluation of District biennial reports in accordance with Section 6.2 of the Master Restrictive Covenants, or as requested by District.

#### Terms

1. As needed, time and materials.
2. A 5-year service contract for a total amount of \$50,000.00. An estimated not to exceed annual amount of \$10,000.00.
3. A 60 day termination clause.

#### Funding Source

Flood Control Tax Levy - Fund: 2005



EXHIBIT 'B'  
Arizona Land and Water Trust (ALWT)  
Pima County Restrictive Covenants for  
MSCP and Non-MSCP Conservation Lands  
Consultant Rate Schedule

President  
*Diana Freshwater*

Vice President  
*Ben Brophy*

Secretary  
*Chuck Pettis*

September 19, 2016

Treasurer  
*Britt Simmons*

**Direct Labor Rates**

*Laura Brown*  
*Les Corey*  
*Fred Frelinghuysen*  
*Charlotte Hanson*  
*Julie Holding*  
*Fritz Jandrey*  
*Pat Lopez, III*  
*Dennis Moroney*  
*Karen Riggs*  
*Bill Roe*  
*Bill Shaw*

Classification  
Land and Water Program Manager

Fully Burdened Rate  
\$75.00 / Per Hour

President Emeritus  
*Jeff Hampton*

Executive Director  
*Liz Petterson*

  
Liz Petterson, Executive Director

Phone contact: Liz Petterson, (520) 577-8564

