



PRIVATE GRANT AGREEMENT

| TNC Accounting Information | |
|----------------------------|-----------------|
| Agreement #: | AZFO-130819 |
| Center/Subcenter #: | 1030523031-0000 |
| Account #: | 5076 |
| Prime Grant: | WFF III 2012-13 |

August 23, 2013

Cochise County
Attn: Karen Riggs, Cochise County Engineer
1415 Melody Lane, Building F
Bisbee, AZ 85603

Re: Grant to Cochise County for up to \$100,000 to Support Site Investigation,
1,811 acre Riverstone Ranch Property, City of Sierra Vista

Dear Ms. Riggs,

We are very pleased to inform you that The Nature Conservancy (the "Conservancy") has agreed to make this Grant to Cochise County ("Awardee") in the amount not to exceed \$100,000. These funds are under the grant **dated November 11, 2011** ("Prime Award") between The Conservancy and The Walton Family Foundation, to work with partners, such as Cochise County, to develop infrastructure and sources of water to recharge the regional aquifer and sustain base flows and groundwater elevations near the San Pedro River.

I. OBJECTIVE

The purpose of this Grant is to provide funds to support the hydrogeological investigation of the Riverstone Ranch property ("Program") more particularly described in the draft Scope of Work (SOW) (Attachment A). The parties understand and acknowledge that the SOW will also be funded by matching funds of \$65,000 from the Grantee and \$50,000.00 from the Upper San Pedro Partnership ("USPP").

II. TERM

This grant shall commence upon execution and shall expire on April 30, 2014.

III. REPORTING

Awardee shall submit programmatic and financial reports as follows:

1. On or by 10/15/13, Copy of Contract as Awarded between Cochise County and selected contractor.
2. On or by 12/16/13, a written summary of Site Investigation progress to date.
3. Monthly conference calls and deliverables as listed in the Scope of Work.
4. Financial reports using the attached format ("Attachment B"). The due dates are 12/16/13 and 4/15/14.

IV. PAYMENTS

An initial disbursement of **\$25,000** will be made upon receipt of Report #1 as listed above. A disbursement of \$75,000, which may include an advance, will be made upon submission and acceptance of the 12/16/13 financial and summary to date reports. Such reports shall be submitted to via post or email:

Brooke Bushman, Upper San Pedro Program Coordinator, 1510 E. Fort Lowell Road, Tucson, AZ 85719; bbushman@tnc.org

Additionally, the Grantee shall prepare and provide a progress report for input and comment to present to the Technical Committee of the USPP at its regularly scheduled meetings.

V. EXPENDITURE LIMITED TO DESIGNATED PURPOSES

Grant funds may be spent only in accordance with the provisions of the Awardee's funding request and budget submitted to the Conservancy. Expenditure of Grant funds is subject to modification only with the Conservancy's prior written approval. Any Grant funds not expended or committed for the purposes of this Grant must be returned to the Conservancy.

The Conservancy may monitor and evaluate the Program's activities, which may include visits by personnel and agents, discussions with Awardee's personnel, and review of financial and other records and materials related to the Program activities financed by this Grant in an effort to determine whether Awardee's activities meet the Conservancy's funding objectives.

To the extent that all activities described in the Scope of Work (Exhibit A) are not completed before the Grant Term expires, Grant funds dedicated to, or associated with completion of the incomplete activities under the Scope of Work shall be returned to the Conservancy or shall be disbursed pursuant to directions from the Prime Award.

VI. PROVIDING FUNDS TO OTHERS

The Awardee is prohibited from using the Conservancy's funds and/or assets for grants to others without the Conservancy's written permission.

VII. DISCLOSURE OF INTERNAL CONFLICTS OF INTEREST

The Awardee must disclose to the Conservancy any proposed use of funds and/or assets for activities in which there is an apparent or actual conflict of interest between the Awardee and its employees, board members, or close relatives of the Awardee's employees or board members and make such expenditure subject to prior Conservancy approval.;

VIII. PROCUREMENT

The Awardee will follow its own policies with regard to documentation of procurements and maintain that documentation in their organization's grant files. If the Awardee does not have written procurement policies, it must retain documentation for procurements (over US \$5,000 outside the U.S. or over \$10,000 in the U.S.). Such documentation will include sole source justification, if appropriate, or documentation of a competitive process or comparison shopping.

IX. RECORDS AND AUDITS

The Awardee agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Award to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed. These records shall be maintained for a period of three years after the final expenditure report is submitted.

The Conservancy and its auditors (internal and external) will have access to all records relating to the award for three years after the final financial and programmatic reports for the award have been submitted to TNC, unless local law requires a longer retention period.

The Awardee shall be responsible for reimbursing for any disallowance of any expenditures related to the work the Awardee has performed.

X. SEGREGATION OF COSTS

The Awardee will segregate the costs of the project described herein from other projects that it currently administers.

XI. TITLE TO AND USE OF PROPERTY

Title to any property purchased with Award funds vests in the Awardee. The Conservancy may not be charged for use of any property purchased with Grant funds.

XII. INTELLECTUAL PROPERTY LICENSE

Title to any Materials developed with Grant funds vests in the Grantee, with the Conservancy getting free irrevocable license to use, publish or distribute all such copyrighted, trademarked, patented Materials, or inventions, trade secrets or other intellectual property rights. The word "Materials" may include, but is not limited to reports, studies, photographs (and negatives), computer programs, drawings, writings or other similar works or documents, along with all supporting data and material, produced under this Grant. The Grantee agrees to provide the Conservancy, and, if applicable, the Grantor to the Conservancy with copies of the Materials at no cost.

XIII. ACKNOWLEDGMENTS

The Awardee agrees to acknowledge the Conservancy's support of the project, including funding contributions and sponsorship, on all media announcements, programs and publications.

XIV. ASSIGNMENT

This Award may not be assigned by the Awardee in whole or in part without the prior written consent of the Conservancy.

XV. NO AGENCY

No legal partnership or agency is established by this Award. Neither party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other party or for the account of the other party. Neither party shall be bound by any acts, representations, or conduct of the other.

XVI. TERMINATION AND REMEDIES

The Conservancy shall have the right to terminate this Award by giving 30 (thirty) days written notice to the Awardee of intent to terminate. Should this occur, payment for work satisfactorily completed will be adjusted accordingly. In addition, if in the judgment of the Conservancy the Awardee defaults in performance of Awardee duties under this Award, whether for circumstances within or beyond the control

of the Awardee, the Conservancy may immediately terminate this Award by written notice to the Awardee. Upon receipt of the termination notice from the Conservancy, the Awardee shall take all necessary action to cancel outstanding commitments relating to the work under this Award. In the event of termination prior to the originally agreed upon expiration, the Conservancy shall pay of any obligations incurred by the Awardee that could not reasonably be canceled.

If at any time the Prime Award is terminated, this Award shall also be automatically terminated as of the termination date of the Prime Award.

XVII. LOBBYING AND POLITICAL CAMPAIGNING

Awardee shall not use any portion of funds transferred under this Award to engage in any lobbying activities unless the parties specifically agree to such lobbying activities in this agreement.

Awardee shall not use any portion of funds transferred under this Award to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

XVIII. LIABILITY

Awardee shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of this Program. Awardee agrees to indemnify and hold the Conservancy harmless from any and all claims, loss, damages, costs and expenses, including attorney fees through the appellate levels, made against or incurred by the Conservancy arising out of work performed by the Awardee under this Award, or arising out of any act or omission of the Awardee.

XIX. USE OF CONSERVANCY NAME/LOGO

The Awardee may not use the Conservancy's name and/or logo in any way without prior written consent from the Conservancy, except to the extent the work performed contemplates their inclusion in the final work product.

XX. CONFIDENTIAL INFORMATION

During the course of the performance of this Award, the Awardee may have access to materials, data, strategies, other information relating to the Conservancy and its programs, or systems, which are intended for internal use only. Any such information acquired by the Awardee shall not be used, published, or divulged by the Awardee to any person, firm, or corporation or in any advertising or promotion regarding the Awardee or the Awardee's services, or in any manner or connection whatsoever without first having obtained the written permission of the Conservancy, which permission the Conservancy may withhold in its sole discretion.

XXI. TAXES

The Awardee agrees to be responsible for any and all filing and payment of taxes and for compliance with any and all provisions and requirements arising under any applicable tax laws. Neither federal, nor state, nor local income tax, nor payroll tax of any kind shall be withheld or paid by the Conservancy on behalf of the Awardee, or employees of the Awardee. If appropriate, the Conservancy shall report all fees paid to the Awardee to the IRS on Form 1099.

XXII. COMPLIANCE WITH LAWS

The Awardee represents, warrants, and agrees that, in connection with the transactions contemplated by this Award: (a) the Awardee can lawfully work in the United States; (b) the Awardee shall obtain, at its

own expense (except to the extent otherwise explicitly stated in this Award) any permits or licenses required for the Awardee's services under this Award; and (c) the Awardee shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of Arizona, and any other jurisdiction(s) in which the Awardee is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Awardee under this Award (in each case, an "Applicable Law"). The Awardee shall not take any actions that might cause the Conservancy to be in violation of any of such Applicable Laws.

XXIII. COMPLIANCE WITH ANTI-TERRORISM LAWS.

The Contractor agrees that it will use any funds received under this Contract in compliance with all applicable antiterrorist financing and asset control laws, regulations, rules and executive orders, including, but not limited to the USA Patriot Act of 2001 and Executive Order 13224.

XXIV. CHOICE OF LAW/FORUM

This Award shall be interpreted, construed and governed by the laws of the State of Arizona and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Award, the Conservancy and the Awardee agree that litigation shall be conducted in the State of Arizona.

XXV. BINDING EFFECT/AMENDMENTS

This Award shall become binding when signed by the parties. This Award supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Award between the parties relating to the work set out above. No amendment shall be effective except in writing signed by both parties.

XXVI. SEVERABILITY

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

FOR COCHISE COUNTY

Karen Riggs

County Engineer

Date: 9/13/13

FOR THE NATURE CONSERVANCY

Holly Richter
Director of Conservation

AZ Chapter, Director of Conservation

Attorney _____ Date _____

Approved by _____
Melinda Ching
Attorney

on _____
August 20, 2013
Date

by _____
Email
e.g. fax/phone/email

Attachments:

A- Site Investigation Scope of Work Outline, Riverstone Ranch Property

B- Financial Report, TNC – Cochise County Riverstone Ranch Grant