

**Memorandum of Understanding
Between
The Nature Conservancy of Arizona
And
Cochise County, State of Arizona**

This Memorandum Of Understanding (the "MOU") is entered into on September 10, 2013, between the Cochise County, Flood Control District, validly organized governmental entity established under the laws of the State of Arizona and under the jurisdiction of Cochise County, with its principal place of business at 1415 Melody Lane Bldg. F, Bisbee, AZ 85603 (the "County"); and The Nature Conservancy, a District of Columbia non-profit corporation, by and through its Arizona Program, with its principal place of business at 1510 E. Fort Lowell Road, Tucson, AZ 85719 (the "Conservancy").

RECITALS:

1. The County and the Conservancy share a mutual goal in ensuring that water supplies are optimally managed to sustain riparian health within the San Pedro Riparian National Conservation Area (SPRNCA), thereby protecting Arizona's San Pedro River.
2. Both parties are also members of the Upper San Pedro Partnership (USPP), a consortium of agencies and organizations working together to preserve the SPRNCA and support projects designed to address the water needs in the Sierra Vista Subwatershed of the Upper San Pedro River Basin.
3. One of the strategies to achieve these mutual goals is to implement a regional recharge initiative with multiple stakeholders at multiple recharge sites and water/effluent sources.
4. The parties have identified the 1,811-acre Riverstone property owned by the Conservancy (the "Property") as a possible location for such recharge facilities.
5. The County, the Conservancy and the USPP have each allocated funds to retain a contractor to assess the feasibility of a recharge facility or multiple facilities on the Property to increase base flows in the San Pedro River.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties agree to the following:

AGREEMENT:

1. **Project Name:** **Riverstone Ranch Property Site Investigation** (the "Project").
2. **Project Performance Period:** September 10, 2013 through December 31, 2014. Forty-five (45) days prior to the expiration date of the Project Performance Period, the parties shall meet to review the work accomplished and determine whether the Project will be completed within the designated Project Performance Period or whether it must be extended to accommodate unanticipated delays.
3. **Project Description:** This Project will be focused on assessing the feasibility of a recharge facility or facilities on the Property to increase base flows to the San Pedro River. The draft Scope of Work for the Project is more particularly described in the attached Exhibit A and incorporated herein by reference.

4. **TNC shall:**

- a) By separate document, grant up to \$100,000.00 to the County to hire a consultant for the Project.
- b) Provide input and feedback and fully participate in the selection of the best consultants for the Project.
- c) Serve as a point of contact with the selected consultant/s, and a direct recipient of project deliverables.
- d) Ensure that TNC's previously developed groundwater modeling work conducted on other properties in the SPRNCA is used to inform infrastructure placement and development.
- e) Participate in key strategic decisions with the County regarding implementation of the Project.
- f) Ensure that the Project plans are innovative and use the best technology available for the benefit of the San Pedro River.
- g) With the County, make regular presentations to the USPP's Technical Committee regarding the Project implementation and solicit input and feedback from its members.

5. **County shall:**

- a) Administer in a fiscally responsible manner, and pursuant to the budget mutually agreed upon between the parties, TNC's grant of funds up to \$100,000.00, USPP's grant of \$50,000.00, as well as its own contribution of \$65,000.00 in fulfilling the Project goals and objectives.
- b) Serve as primary Project Manager for the selected consultant/s, and ensure open communication between the consultants and TNC.
- c) Select, contract with and monitor the performance of the most qualified consultant for the Project.
- d) Participate in key strategic decisions with TNC regarding implementation of the Project.
- e) With TNC, make regular presentations to the USPP's Technical Committee regarding the Project implementation and solicit input and feedback from its members.

6. **Project Representatives:**

TNC: Brooke Bushman, Upper San Pedro Program Coordinator
bbushman@tnc.org
(520) 309-4812 (Office)
1510 E. Fort Lowell Road
Tucson, AZ 85719

Dave Gann, Arizona River Programs Director
dgann@tnc.org
(520) 547-3421 (Office)
1510 E. Ft Lowell Road
Tucson, AZ 85719

County: Karen Riggs, Cochise County Engineer
kriggs@cochise.az.gov
(520) 432-9300 (Office)
1415 Melody Lane, Building F
Bisbee, AZ 85603

7. **Mutual Responsibilities of the Parties:**

- a) Ownership of Documents and Data:
All rights (including, without limitation, copyright), title, and interest to and in any reports, studies, photographs (and negatives), software, drawings, designs, writings or other works or documents produced by the consultant for this Project, along with all drafts, versions, supporting data and other material created in connection therewith (collectively the "Works"), are "works

made for hire" as defined under the copyright laws of the United States. To the extent that any Works are not works made for hire, the consultant shall assign, and at any time in the future upon request shall assign, all right, title and interest, including, without limitation, copyright and other intellectual property rights, in and to the Works to the Upper San Pedro Partnership, TNC and the County.

The parties agree that all intellectual property previously created by any party shall remain the exclusive ownership of the creating parties and further agree that the Works created shall be used for non-profit purposes only. Any use or further distribution of the Works shall require written consent of the other party.

b) Use of Name and Logo:

Neither party may use the other's name and/or logo in any way without prior written consent, except to the extent the work performed contemplates their inclusion in the final work product.

a) Confidentiality

During the course of the performance of this MOU, the parties may have access to materials, data, strategies, trade secrets, proprietary information, systems or other information relating to the other party and its programs, which is intended for internal use only. Any such information acquired shall not be used, published or divulged by the either party to any person, firm in any manner or connection whatsoever without first having obtained the written permission of the other, which permission may be withheld in their sole discretion.

b) Dispute Resolution:

The parties agree that, in the event of any dispute relating to this MOU or the performance of work, they shall first seek to resolve the dispute amicably, in good faith and through mediation.

c) Responsibility:

Each Party shall be solely responsible for the actions and/or omissions of all those who may be operating under their supervision and involved in the implementation of the objective of this MOU, and accept all responsibility for the repair of any possible damage caused in the execution of this MOU, whether to the other Party, or to third parties. Specifically, this MOU does not create any partnership, express or implied between the parties.

d) Compliance with the Law:

The Parties will observe all the applicable laws and regulations during the execution of the work implemented under the provisions of this MOU.

e) Validity of any Provision:

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

f) Entire Agreement:

This MOU, including any attachments, embodies the entire and complete understanding between the Parties, and any amendment to this MOU, and will only be valid if in writing and signed by both Parties. Nothing in this MOU shall be construed as a document by which funds are transferred. All documents associated with any transfer of funds shall be by separate document.

IN WITNESS WHEREOF, the Parties execute this Memorandum of Understanding, effective as of the date first above written.

THE NATURE CONSERVANCY OF ARIZONA



Holly Richter
Arizona Director of Conservation



Date

COCHISE COUNTY FLOOD CONTROL DISTRICT

Ann English
Chair, Board of Supervisors and FCD

Date

ATTEST:

Katie Howard, Clerk of the Board of Supervisors

Date