



# COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603

Phone: (520) 432-8390 | Fax: (520) 432-8397

## Professional Services Contract (PSC)

### Bella Vista Recharge Project Plan and Engineering Design

#### 18-21-HFP-01

THIS CONTRACT is made and entered into this 8th day of May 2018 by and between COCHISE COUNTY, hereinafter referred to as the COUNTY, and WEST CONSULTANTS, INC. hereinafter referred to as the CONTRACTOR. This Contract includes funding through a Federal grant approved by the National Resources Conservation Service (NRCS).

#### **I. SCOPE OF SERVICES**

Subject to the terms and conditions set forth in this contract and its attachments, the Contractor shall provide all material, labor, expertise, transportation, and resources to perform the services as described in:

- Attachment 1 – General Terms and Conditions;
- Attachment 2 - Watershed Plan and Environmental Assessment;
- Attachment 3 – NRCS Engineering Design Statement of Work (SOW);
- Attachment 4 – Bella Vista Urban Enhanced Runoff (UER) Recharge Project Watershed Plan and Environmental Assessment SOW Proposal; and
- Attachment 5 - Bella Vista UER Recharge Project Engineering Design Services SOW Proposal.

#### **II. COMPENSATION AND METHOD OF PAYMENT**

In consideration for the performance of the services described in the aforementioned attachments, the County shall pay the Contractor an amount, not exceed \$499,975.00, for the completion of both the Watershed Plan/Environmental Assessment and the Engineering Design. Additionally, for both sub-projects, alternative will be available to the County for approval which may help in the reduction of this finalized amount. No options shall be implemented by the Contractor without prior approval from the County.

The County will pay the Contractor following the submission of itemized invoices(s) for performance to the contract, which shall be rendered to the County within every 30 days. The Contractor shall only bill for wages and incidentals, as proposed during the negotiation process, for work performed toward each task. The proposed wages and totals for each task shall be considered as not to exceed amounts per each task, and each task shall be billed to the County as a percentage of completion. If any part of any task has been considered to be not needed or redundant, the County reserves the right to reject billing for that work, given written notice to the Contractor. The Contractor shall not bill nor shall the County pay for wages or costs that have not been performed toward the completion of any tasks or any part of this contract. The County shall only pay for the work performed towards completion of a task, in an

effort to control costs. Therefore, if a task is completed underbudget, the County shall only pay the Contractor for the amount of work performed to complete that task.

The Contractor shall be responsible for preparing all documentation and paperwork for submittal to the NRCS and all documentation shall be submitted in a format which has been pre-approved by the NRCS. No payment shall be issued prior to receipt of materials or services and correct invoicing. Each invoice must bear written certification by an authorized County representative confirming the materials and services for which payment is requested, have been performed and received. The County agrees to pay all properly documented invoices, for accepted work and material within thirty (30) days of receipt. All notices, invoices and payments shall be made in writing and may be submitted by physical or electronic mail. The designated recipients for such notices, invoices and payments are as follows:

Contractor: **West Consultants, Inc.**  
**8950 52<sup>nd</sup> Street, Suite 210**  
**Tempe, AZ 85284**  
**Brian Wahlin**  
**Vice President**  
**(480) 345-2155**  
**[bwahlin@westconsultants.com](mailto:bwahlin@westconsultants.com)**

Cochise County: **Joaquin Solis, P.E.**  
**Floodplain Engineer/Assistant Director**  
**Highway & Floodplain Department**  
**1415 Melody Lane**  
**Bisbee, AZ 85603**  
**Phone: (520) 432-9300**  
**Email: [jsolis@cochise.az.gov](mailto:jsolis@cochise.az.gov)**

**Brandon L. Morrison**  
**Contracts Administrator**  
**Procurement Department**  
**1415 Melody Lane, Building C**  
**Bisbee, AZ 85603**  
**Phone: (520) 432-8391**  
**Email: [bmorrison@cochise.az.gov](mailto:bmorrison@cochise.az.gov)**

NRCS: **Jose Rosado, P.E.**  
**Hydraulic Engineer**  
**USDA-NRCS Phoenix Office**  
**230 N. First Avenue, Suite 509**  
**Phoenix, AZ 85003**  
**Phone: (602) 280-8841**  
**Email: [jose.rosado@az.usda.gov](mailto:jose.rosado@az.usda.gov)**

### **III. DURATION AND RENEWAL**

The Contractor shall not commence any billable work or provide any materials or services under this Contract until the Contractor receives an executed copy of the Professional Service Contract and has been provided with a notice to proceed from the Cochise County Procurement Department. The Contractor shall complete all work to the satisfaction of the County by February 28<sup>th</sup>, 2020. All work and/or deliverables shall be in accordance with the Scope of Services and any attachments, within a format that is approved by the County and NRCS. Any requests to extend the required delivery date shall be submitted in writing by the Contractor to the Cochise County Procurement Department.

### **IV. TERMINATION**

- A. The County may cancel this Contract without penalty or further obligation pursuant to A.R.S. §38-511 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 any extension of the Contract is in effect, an employee, or agent to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the County is received by the parties to this Contract, unless the notice specifies a later time.
- B. This Contract may also be terminated at any time by mutual written consent, or by the County, with or without cause, upon giving the thirty (30) days written notice to the Contractor. The County at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the County shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted materials received by the County before the effective date of termination. Upon the County providing written notice of termination to the Contractor, the Contractor shall ensure no further work is performed or materials delivered in performance of this Contract and shall notify all sub-contractors of this notice. The County shall retain the right to rescind any notices of termination given to the Contractor within 10 business days of effective termination.
- C. The County reserves the right to cancel the whole, or any part of this Contract due to failure of the Contractor to carry out any performance, term, promise or condition of the Contract. The County will issue a written ten (10) day notice of default to the Contractor for acting or failing to act in accordance with any of the following, in the opinion of the County:
1. Contractor provides personnel, including sub-contracted personnel, who do not meet the qualification requirements of the Contract;
  2. Contractor fails to adequately perform the stipulations, conditions, or services/specifications required in the Contract or any of its attachments;
  3. Contractor attempts to impose on the County personnel, materials, products, or workmanship for the project that is not of an acceptable quality;
  4. Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
  5. Contractor fails to make progress in the performance of the requirements of the Contract and/or gives the County a positive indication that Contractor will not or cannot perform to the requirements of the Contract or any of its attachments.

**V. ENFORCEMENT, LAWS AND ORDINANCES**

This Contract shall be enforced under the laws of the State of Arizona. The Contractor must comply with all applicable federal, state, and local laws, ordinances, and regulations. The Contractor shall ensure and be responsible for the payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. The Contractor shall maintain, in current status, all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

**VI. INDEPENDENT CONTRACTOR**

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 the 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. The County shall not be liable for any such coverages or liabilities in the performance of this Contract or any associated work relating to this Contract.

The NRCS will be the approving agency for project milestones and modifications issued under this Contract at the recommendation of the County. While the NRCS is not a party that is contracted with the County or the Contractor, the NRCS shall have final approval for all documentation prior to being issued to the Contractor for all major milestones and approvals for completion of any work performed by the Contractor.

**VII. MODIFICATIONS**

This Contract may only be modified by a written modification signed by an authorized agent of the County and an authorized representative for the Contractor. An authorized agent of the County is any personnel having the authority, expressly granted by the Board of Supervisors or its agents. The County reserves the right to make administrative changes to this Contract with a unilateral modification, which does not require the consent of the Contractor. Any modifications that would affect the scope of the Contract must be made bilaterally, with the express consent of the Contractor.

**VIII. WAIVER**

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.

**IX. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, and hold harmless the County of Cochise, and its departments, agencies, boards, commissions, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including reasonable 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 Contractor or any of its owners, officers, directors, agents, employees or subcontractors. 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 Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

**X. INSURANCE**

Contractor and any sub-contractors 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, employees or sub-contractors.

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 agents, representatives, employees or sub-contractors and Contractor is free to purchase additional insurance as may be determined necessary.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE**

Contractor shall provide coverage with limits of liability not less than those stated below.

**1. Commercial General Liability (CGL) – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The County of Cochise, its departments, agencies, boards, officers, officials, agents and employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

**2. Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed, as required by this written Contract, to include the County of Cochise and its departments, agencies, boards, officers, officials, agents and employees as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

**3. Worker's Compensation and Employers' Liability**

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

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

**4. 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	\$2,000,000
• Annual Aggregate	\$2,000,000

- 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.

**B. ADDITIONAL INSURANCE REQUIREMENTS**

The policies shall include, or be endorsed to include, the following provisions:

- 1. The Contractor's policies, as applicable shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the County of Cochise shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E).
- 2. Insurance provided by the Contractor shall not limit the Contractor’s liability assumed under the indemnification provisions of this Contract.

**C. 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 Terry Hudson, 1415 Melody Lane, Bldg C, Bisbee, Arizona 85603.

**D. 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.

#### **E. 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 Contract shall not waive or otherwise affect the requirements of this Contract.

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:**

**Cochise County Procurement Department  
Attn: Brandon L. Morrison  
1415 Melody Lane Building 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.**

#### **F. SUBCONTRACTORS**

Contractors' certificate(s) shall include all subcontractors as additional insured parties under its policies or Contractor shall furnish to the County separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

#### **G. APPROVAL AND MODIFICATIONS**

Any modification or variation from the insurance requirements in this Contract 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 Contract amendment but may be made by administrative action.

### **XI. MISCELLANEOUS PROVISIONS**

- A. No assignment of this Contract or sub-Contract 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 sub-contractors shall comply with Federal and State laws and regulations which are applicable to the services covered by the sub-Contract and shall include all the terms and conditions set forth herein which shall apply with equal force to the sub-Contract, as if the sub-contractor were the Contractor referred to herein. The Contractor shall be responsible for all matters regarding contract performance, whether or not sub-contractors are used in performance of the contract.
- B. 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 Contract shall be used by or

disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information must be referred to the County.

- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value, and which are created under this Contract shall be the property of the County and shall not be used by the Contractor or any other person except with the prior written permission of the County.
- D. This Contract is subject to the provisions of A.R.S. Sec. 38-511.
- E. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable Federal regulations under the Act.

**XII. 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"). The Contractor shall further ensure that each sub-Contractor who performs any work for the Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

The County shall have the right at any time to inspect the books and records of the Contractor and any sub-Contractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Contractor's 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.

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."

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.

This Contract represents the entire Contract between the COUNTY and the CONTRACTOR relating to this requirement and shall prevail over any and all previous verbal and written Contracts.

**CONTRACTOR**

**COCHISE COUNTY  
BOARD OF SUPERVISORS:**

\_\_\_\_\_  
Brian Wahlin  
West Consultants, Inc.

\_\_\_\_\_  
Peggy Judd  
Chairman

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Arlethe Rios  
Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Brandon L. Morrison  
Contracts Administrator

