

AGREEMENT

NO. EV24-0010

between the

WATERSHED MANAGEMENT GROUP

and the

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

WHEREAS, **THIS AGREEMENT** is between the **STATE OF ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY** hereinafter referred to as the “Department” or “ADEQ”, authorized to contract pursuant to A.R.S. § 49-104(B), and **WATERSHED MANAGEMENT GROUP** hereinafter referred to as the “WMG”.

WHEREAS, this written Agreement includes all terms in this document and Attachment 1 - Scope of Work and Budget, Attachment 2 - Requirements for Pass-through Entities and any modifications approved in accordance herewith, and shall constitute the entire Agreement between the parties and supersede all other understandings, oral or written.

THEREFORE, ADEQ and WMG agree to the terms contained in this Agreement.

I. PURPOSE OF AGREEMENT

The objective of this Agreement is to finance and oversee a proposed project aimed at erecting fencing along a riparian area. This is to prevent cattle from entering the vital riparian habitat adjacent to a perennial stretch of Ciénega Creek, which holds the designation of being an Outstanding Waters of Arizona.

WMG will conduct an inventory of an existing riparian cattle exclusion fence to document location, condition of fence, and condition of riparian area. Information from this inventory will inform a Bureau of Land Management (BLM) led project to make necessary fence repairs in the short term, support a National Environmental Policy Act (NEPA) proposal to relocate the fence to upland areas, and plan for riparian habitat projects.

II. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS

This Agreement shall be effective upon the date of the last signature and shall terminate on June 30, 2024, contingent upon funding. The Agreement may be renegotiated for additional periods, by formal contract amendment executed with the same formalities as this Agreement.

Either party may terminate this Agreement at any earlier time by providing written notice to the other party at least thirty (30) days prior to the termination date.

III. DESCRIPTION OF SERVICES

- A. ADEQ shall: Pay WMG \$36,459.50 for services rendered.
- B. WMG shall: Provide all services outlined in the attached Scope of Work (Attachment 1):
 - i. Fencing inventory
 - ii. Data gap sampling
 - iii. Beaver dam analysis
 - iv. Match of \$25,380.00 (volunteer hours, rancher in-kind work).
- C. See scope of work and budget attached (Attachment 1).

IV. MANNER OF FINANCING AND PAYMENT

The Arizona Department of Environmental Quality shall: reimburse WMG for services rendered pursuant to the Scope of Work (Attachment 1), not to exceed \$36,459.50

Invoices shall be paid within thirty days after receipt of an invoice and accompanying documentation that demonstrates the activity was completed.

Reimbursement requests must include detailed support documentation so as to determine that expenses are reasonable, allowable, and allocable to the activities described in the Scope of Work.

This Agreement is funded as a subaward made possible through a Federal Award from the Environmental Protection Agency (EPA). As such, ADEQ is required to provide each subrecipient with specific information related to the Federal Award. This information can be found in Attachment 2 - Requirements for Pass-through Entities.

V. REPORTING REQUIREMENTS

Monthly narrative deliverable status reporting and invoice/request for reimbursement schedule:

- August 31, 2023
- September 30, 2023
- October 31, 2023
- November 30, 2023
- December 31, 2023
- January 31, 2024
- February 29, 2024
- March 31, 2024
- April 30, 2024
- May 31, 2024
- June 30, 2024

VI. APPLICABLE LAW

- A. This Contract shall be governed by and construed in accordance with the laws of the State of Arizona and the Arizona Procurement Code at A.R.S. § 41-2501 *et. seq.* and administrative rules and regulations A.A.C. R2-7-101 *et. seq.*
- B. In the event of any judicial proceeding related to this Agreement or any unauthorized Subcontract the parties agree that venue shall be proper in Maricopa County, Arizona. *See* A.R.S. §§ 12-123 and 12-401(17).
- C. The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

VII. SUBAWARDS

WMG shall request and receive approval from ADEQ prior to issuing subawards funded through this Agreement. The following definitions are applicable to this paragraph:

"Subaward" means any payment to a subrecipient to carry out part of this Agreement.

"Subrecipient" means a non-Federal entity that receives a subaward to carry out a part of this Agreement.

"Non-Federal Entity" means a state, local government, Tribal Nation or Community, institution of higher education (IHE), or nonprofit organization that carries out a part of this Agreement.

VIII. NON-AVAILABILITY OF FUNDS

In accordance with A.R.S. § 35-154, every payment obligation of the Arizona Department of Environmental Quality under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Arizona Department of Environmental Quality at the end of the period for which funds are available. No liability shall accrue to the Arizona Department of Environmental Quality in the event this provision is exercised, and the Arizona Department of Environmental Quality shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

IX. AUDIT

In accordance with A.R.S. § 35-214, WMG shall retain and shall contractually require each contractor and subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion of the Agreement. Upon request, WMG shall produce the original of any or all such records.

X. CONFLICT OF INTEREST

In accordance with A.R.S. § 38-511, the Arizona Department of Environmental Quality may within three years after execution cancel the Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the Arizona Department of Environmental Quality, at any time while the Agreement is in effect, becomes an employee or agent or any other

party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the matter of the Agreement.

XI. NONDISCRIMINATION

All Parties shall comply with all existing federal, state, and local laws, rules, policies, or executive orders, including the Americans with Disabilities Act and State of Arizona Executive Order 2023-1, to prohibit discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing the contract or subcontract.

XII. NOTICES

WMG shall address all invoices, and all other notices, relative to this Agreement to ADEQ to:

Elizabeth Boettcher, Environmental Scientist/Project Manager
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007
Email: boettcher.elizabeth@azdeq.gov

ADEQ shall address all payments, and all other notices, relative to this Agreement to WMG to:

Catlow Shipek, Senior Program Director
Watershed Management Group
1137 N. Dodge Blvd.
Tucson, AZ, 85716]
Email: catlow@watershedmg.org

XIII. INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, 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 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. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

IN WITNESS WHEREOF, the parties hereto agree to execute this Agreement.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

WATERSHED MANAGEMENT GROUP

DocuSigned by:
Josephine Maressa 9/15/2023
A5AF6048FAC8426...
Name: Josephine Maressa Date:
Title: Deputy Director, Water Quality Director
Arizona Department of Environmental Quality

DocuSigned by:
Catlow Shipek 9/15/2023
166784C8124E4FD
Name: Catlow Shipek Date:
Title: Senior Program Director
Watershed Management Group

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Attachment 1 - SCOPE OF WORK

1 **PURPOSE**

The purpose of this agreement is to partner with Watershed Management Group (WMG) to conduct watershed improvement activities in the Cienega Creek sub-watershed of the Santa Cruz watershed.

Cienega Creek is an Outstanding Arizona Water (OAW) and is classified as an inconclusive water for metals, nitrates, and other parameters due to insufficient data. Although the most recent data from 2018 shows it is attaining for *E. coli*, gaps in current fencing allow the regular presence of around 20 trespassing cows for up to 20 plus days a year in the riparian habitat. The presence of cattle indicates *E. coli* levels could be higher than data from five years ago, adversely impacting human health in this recreated area.

This SOW will result in the following:

- ADEQ will know the health of Cienega Creek, an OAW. Data gaps will be filled to determine if Cienega Creek is attaining or not for *E.coli*, metals, and nitrates.
- The project will expedite partners' submission for a new fence for long-term water quality benefits from excluding cattle in the sensitive riparian area.
- The project will expedite future allocation of funding for riparian habitat enhancement projects in advance of beaver reintroduction.

2 **PROGRAM OVERVIEW**

The Arizona Department of Environmental Quality (ADEQ) allocates money from the United States Environmental Protection Agency (EPA) to partners for implementation of projects to reduce nonpoint source pollution and provide watershed protection. The distribution of grant funds from EPA is provided pursuant to Section 319(h) of the Clean Water Act and administered by the Water Quality Division at ADEQ.

3 **OBJECTIVES**

The Bureau of Land Management (BLM) is working to develop a National Environmental Policy Act (NEPA) proposal to shift and improve an existing fence line within a critical riparian corridor to limit cattle access to the Cienega Creek riparian area. However, there is limited funding and staffing to support this effort to ensure timely action.

BLM requested support from WMG to assist the development of the NEPA project proposal by conducting an inventory of the existing fence line to document location, condition, and the need

for short-term repairs. To address the long-term need, BLM has verbally committed to funding new fencing once the NEPA actions are completed. To expedite the work needed for NEPA and to develop measures to improve and protect water quality, WMG is requesting nonpoint source funding (under Clean Water Act Section 319) from ADEQ under this SOW.

4 **ACTIVITIES**

Tasks will include:

1. Gathering water quality samples and data needed to fully assess the OAW
2. Surveying existing 10 miles of fencing
3. Surveying habitat to inform future protection efforts, including
 - a. the presence of bullfrog, a non-native invasive species, in the OAW
 - b. potential placement locations for beaver-dam analogue projects (man-made structures mimicking beaver dams)
4. Developing plan for beaver dam analogue projects and potential reintroduction of beavers (in coordination with Arizona Game and Fish Department)

5 **DELIVERABLES AND REPORTING**

Deliverables are provided in the table below:

Milestone	Task	Deliverable	Start	End
1. Fence Inventory		Map of fence line and 1-2page summary of process	9/30/2023	1/31/2024
	1.1 Coordinate with BLM on survey protocols and tools and State Trust Land access permit		9/30/2023	10/01/2023
	1.2 Map and record fence line assessment, water gaps, fence breaks, and cattle trails		10/1/2023	12/15/2023
	1.3 Compile GIS data and notes and share with BLM		11/1/2023	12/31/2023
	1.4 Generate map and summary report		1/1/2024	2/27/2024
2. Water Quality Sampling		Water quality samples and data		
	2.1 Training and site visit with ADEQ staff		9/30/2023	10/31/2023
	2.2 Seasonal sampling of data gaps: Oxygen, metals, e-Coli	Water quality samples and data provided seasonally	10/1/2023	5/30/2024
3. Beaver restoration planning and Mattie Canyon watershed erosion control project assessment		3-5 page with accompanying map(s) to highlight suggested restoration strategies, access, staging, and estimated materials and labor costs	9/30/2023	6/30/2024

Milestone	Task	Deliverable	Start	End
	3.1 Coordinate with BLM, Vera Earl Ranch, and State Land Department for access and survey logistics	Annotated Map(s)	9/30/2023	10/31/2023
	3.2 Assess Cienega Creek proposed beaver release area to update BDA plan and assess Mattie Canyon, a tributary to the beaver release area, to identify channel, bank, and upland erosion control needs and opportunities to address downstream sediment concerns in proposed beaver habitat area; includes photo documentation, GPS notation of existing conditions, proposed structure locations, erosional feature measurements.	Annotated Map(s), erosion observation photos and data	10/1/2023	3/30/2024
	3.3 Draft restoration plan with corresponding map(s) and share with BLM and partners for input and feedback	Draft Plan with summary narrative, maps,	1/1/2024	4/30/2024
	3.4 Finalize concept plan with partners and estimate project costs	Plan with summary narrative, maps, and budget	4/30/2024	6/30/2024

In addition to the above deliverables, WMG will provide ADEQ monthly status reports along with invoices. The schedule for the status reports and invoices is in Section 6 Compensation below.

6 **COMPENSATION**

WMG will submit invoices along with status reports to ADEQ on the following schedule:

- September 30, 2023
- October 31, 2023
- November 30, 2023
- December 31, 2023
- January 31, 2024
- February 29, 2024
- March 31, 2024
- April 30, 2024
- May 31, 2024

- June 30, 2024

Total project budget: \$36,459.50

Match provided by WMG: \$25,380.50

Refer to the enclosed Budget.