



COCHISE COUNTY PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603
Phone: (520) 432-8391 Fax: (520) 432-8397

Professional Services Agreement

PUBLIC OUTREACH COORDINATOR

AGREEMENT NO. 10-13-WD-04

THIS AGREEMENT is made and entered into this 16th day of November, 2009 by and between the UPPER SAN PEDRO WATER DISTRICT, hereinafter referred to as the USPWD, and GORDLEY DESIGN GROUP, INC., hereinafter referred to as the COORDINATOR.

I. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this agreement, Coordinator shall provide the services in accordance with the requirements of RFP No. 10-13-WD-04 and Coordinator's proposal response to RFP No. 10-13-WD-04.

II. COMPENSATION AND METHOD OF PAYMENT

In consideration of the performance of the services described in RFP No. 10-13-WD-04 and Coordinator's proposal response to RFP No 10-13-WD-04, the USPWD shall pay the Coordinator \$49,840.00. A NOT TO EXCEED amount of \$20,298 is included as an addendum to the original proposed cost proposal for additional work and included herein as Exhibit A, Fee Summary. Additional work shall not be performed **unless approved in advance, in writing.**

The USPWD will pay the Coordinator following the submission of itemized invoices(s) for the services rendered. No payment shall be issued prior to receipt of material or service and correct invoice. Each invoice must bear written certification by an authorized USPWD representative confirming the services for which payment is requested have been performed. USPWD agrees to pay all properly documented invoices, for accepted work within thirty (30) days of receipt.

All notices, invoices and payment shall be made in writing and may be given by personal delivery or by mail.

The designated recipients for such notices, invoices and payments are as follows:

Coordinator: **Gordley Design Group, Inc.**
2540 N Tucson Blvd.
Tucson, AZ 85716
Jan Gordley, President
520-327-6077

Upper San Pedro Water District
Mike Rutherford, Chairman
Upper San Pedro Water District
P.O. Box 3255
Sierra Vista, AZ 85636

III. DURATION AND RENEWAL

This agreement shall be in effect from November 16, 2009 through July 15, 2010. The Coordinator shall complete all work to the satisfaction of the USPWD in accordance with RFP No. 10-13-WD-04 and Coordinator's proposal response to RFP No. 10-13-WD-04.

IV. TERMINATION

- A. The USPWD may cancel this Agreement 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 Agreement on behalf of the USPWD is or becomes, at any time while the Agreement or any extension of the Agreement is in effect any employee of, or Coordinator to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the USPWD is received by the parties to this Agreement, unless the notice specifies a later time.

- B. This Agreement may also be terminated at any time by mutual written consent, or by the USPWD, with or without cause, upon giving the thirty (30) days written notice to the Coordinator. The USPWD at its convenience, by written notice, may terminate this Agreement, in whole or in part. If this Agreement is terminated, the USPWD shall be liable only for payment under the payment provisions of this Agreement for services rendered and accepted material received by the USPWD before the effective date of termination.

- C. The USPWD reserves the right to cancel the whole or any part of this Agreement due to failure of the Coordinator to carry out any term, promise or condition of the Agreement. The USPWD will issue a written ten (10) day notice of default to the Coordinator for acting or failing to act any of the following, in the opinion of the USPWD:
 - 1. Coordinator provides personnel who do not meet the requirements of the Agreement;
 - 2. Coordinator fails to adequately perform the stipulations, conditions, or services/specifications required in the Agreement;
 - 3. Coordinator attempts to impose on the USPWD personnel, materials, products, or workmanship that is not of an acceptable quality;
 - 4. Coordinator fails to furnish the required service and/or product within the time stipulated in the Agreement;
 - 5. Coordinator fails to make progress in the performance of the requirements of the Agreement and/or gives the USPWD a positive indication that Coordinator will not or cannot perform to the requirements of the Agreement.

IV. ENFORCEMENT, LAWS AND ORDINANCES

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

V. INDEPENDENT COORDINATOR

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 Coordinator is advised that taxes or social security payments shall not be withheld from a USPWD payment issued hereunder and that Coordinator should make arrangements to directly pay such expenses, if any. The USPWD will not provide any insurance coverage to the Coordinator including Workmen's Compensation coverage.

VI. MODIFICATIONS

This Agreement may only be modified by a written amendment signed by persons duly authorized to enter into Agreements on behalf of the USPWD and the Coordinator.

VII. WAIVER

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

VIII. INDEMNIFICATION CLAUSE:

To the fullest extent permitted by law, Coordinator agrees to indemnify, defend, and hold harmless the USPWD, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from all claims, damages, losses, and expenses, including but not limited to attorney's fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of Coordinator, or anyone for whose acts Coordinator may be liable. The USPWD reserves the right, but not the obligation, to participate in defense without relieving Coordinator of any obligation hereunder.

The amount and type of insurance required shall not in any way be construed as limiting the scope of the indemnification set forth above.

IX. INSURANCE REQUIREMENTS:

Coordinator and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Coordinator, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The USPWD in no way warrants that the minimum limits contained herein are sufficient to protect the Coordinator from liabilities that might arise out of the performance of the work under this contract by the Coordinator, his agents, representatives, employees or subcontractors and Coordinator is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Coordinator shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – 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
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The USPWD shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Coordinator".

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

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. This requirement shall not apply when a Coordinator or subcontractor is exempt under A.R.S. 23-901, **AND** when such Coordinator or subcontractor executes the appropriate sole proprietor waiver form.

3. **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	\$1,000,000
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, Coordinator warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that 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. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the USPWD is named as an additional insured, the USPWD shall be an additional insured to the full limits of liability purchased by the Coordinator even if those limits of liability are in excess of those required by this Contract.
2. The Coordinator's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the USPWD, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Cochise County Procurement Department, attention Terry Hudson, Senior Buyer, 1415 Melody Lane, Bldg C, Bisbee, Arizona 85603
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The USPWD in no way warrants that the above-required minimum insurer rating is sufficient to protect the Coordinator from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Coordinator shall furnish the USPWD with certificates of insurance (ACORD form or equivalent approved by the USPWD) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the USPWD before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. 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 the Cochise County Procurement Department, attention Terry Hudson, Senior Buyer, 1415 Melody Lane, Bldg C, Bisbee, Arizona, 86503. The USPWD project/contract number and project description shall be noted on the certificate of insurance. The USPWD 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:** Coordinators' certificate(s) shall include all subcontractors as additional insured's under its policies or Coordinator shall furnish to the USPWD separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

X. MISCELLANEOUS PROVISIONS

- A. No assignment of this Agreement or sub-agreement shall be made by the Coordinator with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department. All sub-consultants shall comply with Federal and State laws and regulations which are applicable to the services covered by the sub-agreement and shall include all the terms and conditions set forth herein which shall apply with equal force to the sub-agreement, as if the sub-consultant were the Coordinator referred to herein. The Coordinator is responsible for Agreement performance whether or not sub-consultants are used.

- B. The Coordinator shall establish and maintain procedures and controls that are acceptable to the USPWD for the purpose of assuring that no information contained in its records or obtained from the USPWD or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information must be referred to the USPWD.
- 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 Agreement shall be the property of the USPWD and shall not be used by the Coordinator or any other person except with the prior written permission of the USPWD.
- D. This Agreement is subject to the provisions of A.R.S. Sec. 38-511.
- E. The Coordinator 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.

XI. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

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

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

Any breach of the Coordinator's or any sub-consultant'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 Agreement subjecting the Coordinator to penalties up to and including suspension or termination of this Agreement. If the breach is by a sub-consultant, and the sub-agreement is suspended or terminated as a result, the Coordinator 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-agreement or retain a replacement sub-consultant, (subject to USPWD approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

The Coordinator shall advise each sub-consultant of the USPWD's rights, and the sub-consultant's obligations, under this Section by including a provision in each sub-agreement substantially in the following form:

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

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

XII. FOREIGN INVESTMENT AND BUSINESS OPERATIONS:

By signing this agreement Coordinator certifies that it does not have scrutinized business operations in Iran and Sudan as per A.R.S sec. 35-297.

This Section Left Intentionally Blank

This Agreement represents the entire agreement between the USPWD and the COORDINATOR relating to this requirement and shall prevail over any and all previous verbal and written agreements.

COORDINATOR:

APPROVED BY:

Authorized Signature

Mike Rutherford,
Chairman

Jan Gordley, President

2.7 Proposed Fee

The proposed fee includes all costs associated with the performance of the services specified, including materials, supervision, labor, insurance, transportation, delivery, postage and any other related costs.

Citizen Polling: \$8,000

Cost to draft citizen survey questionnaire and implement a statistically valid telephone survey of 400 residents who live within Sierra Vista Sub-Watershed boundaries (including the communities of Sierra Vista, Palominas/Hereford, Bisbee, Huachuca City and Tombstone, as well as rural Cochise County areas).

- Includes questionnaire development and pre-tests
- Includes data processing and executive summary of findings

Planning for and Evaluating Public Meetings: \$8,040

This cost includes time to assess needs, plan format, advise on information to be presented, debrief and evaluate the outcome of each meeting and propose and institute modifications to next meeting and materials.

Public Meetings: \$9,500

Cost to set-up six (6) two-hour public meetings for approximately 100 people. Coordinate meeting dates and locations with the Board's staff, secure meeting sites, provide light refreshments (e.g. cookies and water bottles) and staff.

- Two (2) rounds of public meetings in each location:
Sierra Vista, Bisbee and Tombstone

Meeting Materials: \$10,400

Cost to create public meeting announcement advertisements; meeting materials, including sign-in sheets, questionnaires and fact sheets; and prepare meeting summaries.

- Materials for two (2) rounds of three (3) public meetings each
- Provide informational materials for project Web site
- Assumes black and white printing of three (3) independent informational material pieces for 100 people per meeting
- Assumes creating and producing two (2) print advertisements for each public meeting

(Note: the advertisement size for all three print publications will be the same)

News Releases: \$1,700

Cost to draft two (2) news releases for each public meeting.

EXHIBIT A FEE SUMMARY

Cochise County
Public Outreach Coordinator
Organizing Board of the Upper San Pedro Water District

- Assumes one government official news release per public meeting
- Assumes one news media news release per public meeting

Paid-media Public Meeting Announcement Placement: \$6,500

Cost to place one public meeting announcement in area newspapers per public meeting.

- Assumes advertisement is black and white and is no larger than 6.55" x 10" in size
- Assumes no more than two (2) print advertisement insertions in both the Sierra Vista Herald and Bisbee Daily Review for each of the Sierra Vista and Bisbee meetings: eight (8) ads total
- Assumes no more than two (2) print advertisement insertions in each publication: the Sierra Vista Herald, Bisbee Daily Review and Tombstone News for each Tombstone meeting: 12 ads total

Contact: \$1,200

Provide contact as applicable with affected and interested parties located in the project area, which include residents, business and property owners, stakeholders, community representatives and/or governmental representatives. Services to include:

- Compile and maintain database of stakeholders, interested parties, affected businesses, residents and media
- Respond to requests for information regarding the public process

Project Management and Planning Meetings: \$4,500

Costs associated with three (3) meetings with the Board in Cochise County, including meeting planning and travel.

- Participate in a project planning and kick-off meeting
- Participate in an assessment planning meeting midway through the public process
- Participate in an assessment and recommendation meeting at the end of the process-

Proposed Fee Total: \$49,840

PROFESSIONAL SERVICES AGREEMENT NO. 10-13-WD-04

EXHIBIT A FEE SUMMARY

Organizing Board of Directors Upper San Pedro Water District

Addendum to September 17, 2009 Public Outreach Proposal

Gordley Design Group, Inc.

November 11, 2009

Proposed Fees: Additional Survey, Meetings and Materials

The proposed fees includes all costs associated with the performance of the services specified, including materials, supervision, labor, insurance, transportation, delivery, postage and any other related costs.

<u>Citizen Survey:</u>	\$8,500
Cost to draft citizen survey questionnaire to document change in public perception since November/December 2009 baseline citizen survey, and implement a statistically valid telephone survey of 400 residents who live within Sierra Vista Sub-Watershed boundaries (including the communities of Sierra Vista, Palominas/Hereford, Bisbee, Huachuca City and Tombstone, as well as rural Cochise County areas).	
<ul style="list-style-type: none">• Includes questionnaire development and pre-tests• Includes data analysis, processing and executive summary of findings	
<u>Public Meetings:</u>	\$6,332
Cost to set-up four (4) two-hour public meetings for approximately 50 people each. Coordinate meeting dates and locations with the Board's staff, secure meeting sites, provide light refreshments (e.g. cookies and water bottles) and staff.	
<ul style="list-style-type: none">• Two (2) rounds of public meetings in each location: Palaminas/Hereford and Huachuca City	
<u>Meeting Materials:</u>	\$1,733
Cost to add information to public meeting announcement advertisements; additional meeting materials, including sign-in sheets and questionnaires, produce three (3) fact sheets for use at all public meetings; and prepare meeting summaries.	
<ul style="list-style-type: none">• Materials and summaries for four (4) additional public meetings• Assumes black and white reproduction of six (6) independent informational material pieces for 50 people per meeting	
<u>Paid-media Public Meeting Announcement Placement:</u>	\$756
Public meeting announcements for the Huachuca City and Palaminas/Hereford public meeting will be listed in the Sierra Vista Herald, adding additional ad space within the advertising for the Sierra Vista Public meeting.	
<ul style="list-style-type: none">• Assumes no more than two (2) print advertisement insertions in publication: The Sierra Vista Herald	
<u>Project Management and Planning Meetings:</u>	\$865
Costs associated with three (3) teleconference progress meetings with Board members.	

PROFESSIONAL SERVICES AGREEMENT NO. 10-13-WD-04

EXHIBIT A FEE SUMMARY

<u>Small Group Meetings</u>	\$1,242
Costs associated with two (2) meetings with special interest groups, including meeting planning and participation.	
<ul style="list-style-type: none">• Contact and coordination of meeting• Participate in meeting presentation and discussion• Summary report on meeting	
<u>Final Public Involvement Recommendations Summary</u>	\$870
Provide summary of recommendations for "next steps" for public involvement and information.	
Proposed Fee Total:	\$20,298

PROFESSIONAL SERVICES AGREEMENT NO. 10-13-WD-04