

ADDENDUM AGENDA



Tuesday, August 3, 2021

NOTICE OF REGULAR SESSION AND EXECUTIVE SESSION OF THE COCONINO COUNTY BOARD OF SUPERVISORS AND BOARD OF DIRECTORS OF THE COCONINO COUNTY FLOOD CONTROL DISTRICT, COCONINO COUNTY JAIL DISTRICT AND COCONINO COUNTY PUBLIC HEALTH SERVICES DISTRICT

PURSUANT TO A.R.S. § 38-431.02

10:00 a.m. – Regular Session

1:15 p.m. – Discussion items

The Board of Supervisors' meeting will be held via webinar technology using Zoom. To join the webinar, please use the following url: <https://zoom.us/j/99504615078>
Or Telephone: Dial 833 548 0282 (Toll Free), Webinar ID: 995 0461 5078. The meeting can also be streamed and viewed on the County YouTube site:
https://www.youtube.com/results?search_query=coconino+county

The Board may change the order of the agenda at the time of convening the meeting or at any time during the meeting. Members of the Board of Supervisors will attend the meeting virtually or by telephone. Work sessions and regular meetings are open to the public. Persons with a disability may request a reasonable accommodation by contacting the Clerk of the Board of Supervisors Office at 928-679-7145. Requests should be made as early as possible to allow time to arrange the accommodation.

Notice of Option to Recess in Executive Session

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Board of Supervisors and to the general public that, at this meeting, the Board of Supervisors may vote to recess into Executive Session, which will not be open to the public, with the County's attorneys for legal advice and discussion on any item listed on the following agenda, pursuant to A.R.S. § 38-431.03 (A) (3).

Addendum Consent Items – Flood Control District:

- 38A.** Consideration and possible action to approve the Agreement with Natural Channel Design, Inc. and the County Flood Control District for RFQ 2021-109 On-call Engineering Services from July 21, 2021 to July 31, 2022, up to \$500,000 per project. **Flood Control District**
- 38B.** Consideration and possible action to approve the Fourth Amendment of the Agreement with Tiffany Construction, Inc. and the County Flood Control District adding language relating to federal funding requirements. **Flood Control District**

ADDENDUM AGENDA

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the Coconino County Administration Building, 219 East Cherry Avenue, Flagstaff, Arizona, on this Date: _____ at _____ am / pm (circle one) in accordance with the statement filed by the Coconino County Board of Supervisors with the Clerk of the Board. Dated this _____ day of _____, 2021.

_____ Lindsay Daley, Clerk of the Board



Meeting Date: August 3, 2021

DATE: July 30, 2021

TO: Honorable Chair and Members of the Board of Directors of the County Flood Control District

FROM: Lucinda Andreani, Deputy Public Works Director

SUBJECT: **Consideration and possible action regarding approval the Agreement with Natural Channel Design, Inc. and the County Flood Control District for RFQ 2021-109 On-call Engineering Services from July 21, 2021 to July 31, 2022, up to \$500,000 per project.**

RECOMMENDATION:

Approve the Agreement with Natural Channel Design, Inc. and the County Flood Control District for RFQ 2021-109 On-call Engineering Services from July 21, 2021 to July 31, 2022, up to \$500,000 per project.

BACKGROUND:

The Coconino County Flood Control District desires several firms under contract to be selected for projects within their area of expertise. The Independent Contractors have been selected based upon their Statements of Qualifications (SOQs), which adheres to Purchasing Policy.

The Independent Contractor shall provide professional engineering services to the County Flood Control District during the term of this Agreement, when and as requested by the County Flood Control District for specific projects. A scope of work will be provided by the firm before the award of a project. The services include, but are not limited to: plans, specifications, survey, hydrology and hydraulics, water and wastewater system improvements, construction management and may be required to adhere to federal requirements for grand funding.

By separate submittal, the Board is considering the award of RFQ 2021-109 “On-Call Engineering Services” to ten (10) firms, including Natural Channel Design, Inc. This submittal is to seek approval for a contract between the firm and Coconino County Flood Control District.

ALTERNATIVES:

The following alternatives are available to the Board of Directors:

- Approve this submittal.
- Disapprove this submittal and request an alternative solution.

FISCAL IMPACT:

The cost will vary depending upon the projects performed.

REVIEWED BY ELECTRONIC ROUTING

ATTACHMENTS:

1. (3) Original Natural Channel Design, Inc. Agreements
2. Insurance Certificates.

INDEPENDENT CONTRACTOR AGREEMENT (hereinafter the "Agreement") made this day of _____, 2021,

BETWEEN

NATURAL CHANNEL DESIGN, INC., an Arizona corporation, located at 2900 North West Street, Suite 5, Flagstaff, Arizona 86004, (hereinafter the "Independent Contractor").

AND

COCONINO COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, of 219 East Cherry Avenue, Flagstaff, Arizona 86001, (hereinafter the "District");

WHEREAS:

- A. The District has a need to obtain the services of an Independent Contractor to provide professional engineering services; and
- B. The District has issued a Request for Quote RFQ 2021-109 "On-Call Engineering Services" in order to obtain the Service; and
- C. The Independent Contractor has submitted a successful proposal; and
- D. The District desires to contract with the Independent Contractor to provide the services; and
- E. The Independent Contractor is ready, willing and able to provide to provide the services on the terms and conditions set out herein.

THEREFORE, in consideration of their mutual promises set out herein, the Independent Contractor and the District agree as follows:

I. Scope of Work

- A. The Independent Contractor shall provide professional engineering services to the District during the term of the Agreement, when and as requested by the District for specific projects. The District reserves the right to have multiple Independent Contractors under contract to select from to provide such services.
- B. The Independent Contractor shall prepare, upon request from the District, a "Scope of Work" for a given project and include estimated hours of work to be performed by the employees shown on Attachment "A" hereto who will be working on said project.

II. Compensation

The compensation to be paid by the District for the work performed by the Independent Contractor under Section I above, shall be based on the SOW prepared for each project. The payment terms will be net thirty (30) days. In no instance, however, shall the total amount due the Independent Contractor exceed the amount of \$500,000.00 per project.

III. Term of Agreement

The effective term of this Agreement is from July 21, 2021 through July 31, 2022.

The District reserves the option to extend this agreement for an additional one-year period for no more than four (4) additional years.

IV. Termination of Agreement

Either party may terminate this Agreement, with or without cause, by giving thirty (30) days written notice to the other party. In that event, the terminate date shall be the thirtieth (30th) day after furnishing proper notice to the other party. The Independent Contract shall be paid for any work completed up to the date written notice of termination is sent to the other party by first class mail.

V. Insurance

The Independent Contractor will provide and maintain and cause its sub-contractors to provide and maintain appropriate insurance acceptable to the District.

A. In no event will the total coverage be less than the minimum insurance coverage specified below:

- i. Commercial General Liability occurrence version in an amount not less than One Million Dollars (\$1,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate. The policy shall include coverage for bodily injury, property damage, personal injury, and products and completed operations and shall include the following.

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Fire Legal Liability	\$50,000
Each Occurrence	\$1,000,000

- ii. Automobile Liability in an amount not less than One Million Dollars (\$1,000,000) combined single limit (CSL) per occurrence to include either “any auto” or “scheduled, owned, hired, and or non-owned vehicles. Such insurance shall include coverage for loading and unloading hazards.
- iii. A Certificate of Insurance for workers’ compensation coverage or Sole Proprietor Waiver, if the Independent Contractor has no employees. If a Certificate of Insurance is provided, the insurer must agree to waive all rights of subrogation against the District, its officers, agents, employees and volunteers for losses arising from work performed by the Independent Contractor for the District.
- iv. Professional Liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate with a retroactive liability date (if applicable to claims made coverage) the same as the effective date of the contract or earlier. The policy shall contain an

Extended Claim Reporting Provision of not less than two years following termination of the policy.

- B. The Independent Contractor will name the County and the Flood Control District, its agents, officials, employees and volunteers as additional insureds for general liability including premises/operations, personal and advertising injury, products/completed operations, and as additional insured for automobile liability, and will specify that the insurance afforded by the Independent Contractor is primary insurance and that any insurance coverage carried or self-insurance by the County, any department or any employee will be excess coverage and not contributory insurance to that provided by the Independent Contractor. Said policies must contain a severability of interest provision. County reserves the right to continue payment of premium for which reimbursement will be deducted from amounts due or subsequently due Independent Contractor.
- C. If a policy does expire during the life of the Contract, a renewal certificate must be sent to the County fifteen (15) days prior to the expiration date.
- D. Upon the execution of this Agreement by the Independent Contractor, the Independent Contractor will furnish the District with copies of the Certificates of Insurance drawn in conformity with the above insurance requirements. The District reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements. Failure on the part of the Independent Contractor to procure and maintain the required liability insurance and provide proof thereof to the District within ten (10) days following the commencement of a new policy, will constitute a material breach of the Agreement upon which the District may immediately terminate the Agreement.
- E. The Independent Contractor will comply with statutory requirements for both workers' compensation and unemployment insurance coverage during the term of this Agreement. A Certificate of Insurance for workers' compensation coverage, or Sole Proprietor Waiver, will be provided within ten (10) days of signing this Agreement. The insurer must agree to waive all rights of subrogation against the District, its officers, agents, employees and volunteers for losses arising from work performed by the Independent Contractor for the District.

VI. Indemnification

The Independent Contractor will at all times, to the fullest extent permitted by law, indemnify, keep indemnified, defend and save harmless the District and/or any of its agents, officials and employees from any and all claims, demands, suits, actions, proceedings, losses, costs and/or damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by the District on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reason of any alleged act, omission, professional error, fault, mistake, or negligence of the Independent Contractor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incidental to the performance of this Agreement or arising out of Workers' Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of the Independent Contractor and/or its subcontractors or claims under similar such laws or

obligations. The Independent Contractor's obligations under this paragraph do not extend to any liability caused by the sole negligence of the District or its employees.

VII. Independent Contractor's Status

The Independent Contractor will operate as an independent contractor and not as an officer, agent, servant, or employee of the District.

- A. The Independent Contractor will be solely responsible for the acts and omissions of its officers, agents, servants, and employees. As an independent contractor, the Independent Contractor is responsible for the payment of all applicable income and employment taxes and for providing all workers' compensation insurance required by law.
- B. The independent contractor will operate as an independent entity and none of the employees of the independent contractor are to be considered employees of Coconino County. Independent contractor employees are not eligible for Coconino County group health insurance or other benefits.
- C. The independent contractor will be solely responsible for offering health insurance to its employees as required by the Affordable Care Act, and for any penalties charged to it by the Internal Revenue Service for noncompliance with the Affordable Care Act.
- D. In performance of services within this contract, the independent contractor shall determine his/her necessary hours of work. Contractor shall provide whatever tools; equipment, vehicles, and supplies Contractor may determine to be necessary in performance of services hereunder. Contractor may establish offices in such locations within or outside Arizona, as Contractor may determine to be necessary for the performance of services hereunder, and shall be responsible for all expenses of operation of said office, including expenses incurred in hiring employees and assistants to Contractor.
- E. The Independent Contractor has no authority to enter into contracts or agreements on behalf of the District. This Agreement does not create a partnership between the parties.

VIII. Force Majeure

Independent Contractor will not be liable for any unforeseen acts or events that prevent it from performing its obligations under this Agreement, if beyond the control of the party despite exercise of due diligence, including, but not limited to, delays caused by fire, flood, earthquake, landslide, washouts, storm damage, acts of war or terrorism, unavailability of materials or supplies, epidemics, labor strikes, civil disturbances, insurrections, riots, explosions, and acts of God.

IX. Immigration and Scrutinized Business

Pursuant to A.R.S. 41-4401, Coconino District, as a political subdivision of the State of Arizona, is required to include in all contracts the following requirements:

- A. The Independent Contractor and each of its subcontractors warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-314(A).

- B. A breach of warranty under paragraph (a) above shall be deemed a material breach of the contract and is subject to penalties up to and including termination of the contract.
- C. The District retains the legal right to inspect the papers of the Independent Contractor or an of its subcontractors who work on the contract to ensure that Independent Contractor or its subcontractor(s) is complying with the warranty provided under paragraph (a) above.
- D. False certifications may result in the termination of this contract.

X. Certification Pursuant to A.R.S. § 35-393.01

Certification Pursuant to A.R.S. § 35-393.01; If Independent Contractor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, Independent Contractor certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

XI. Non-Appropriation of Funds

This Agreement is contingent upon receipt of funding from the NRCS for the work outlined in the Scope of Work, attached to this Agreement as Exhibit A. In the event funds are not appropriated for this Agreement by the District for any fiscal year following the current fiscal year of the District, the Agreement shall terminate automatically as of the last day for which funds were appropriated. Termination for non-appropriation of funds shall not be considered a default by the District. Upon such termination, the District shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

XII. Compliance with NRCS Contract

Independent Contractor understands and agrees that, for work performed on behalf of the District's agreement with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), as a condition of receiving funds from the NRCS for the work described in this Agreement, Independent Contractor, as a subcontractor receiving federal funds, is subject to, and will comply with, the same terms and conditions as the District under the NRCS agreement with the District.

XIII. Lobbying

Pursuant to 31 U.S.C. § 1352, the Independent Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Independent Contractor to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative

agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the Agreement between the Coconino County Flood Control District and the United States Department of Agriculture Natural Resources Conservation Service for Emergency Watershed Protection, the Independent Contractor shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XIV. Equal Opportunity Clause pursuant to 41 C.F.R. § 60-1.4(b).

During the performance of this contract, the contractor agrees as follows:

A. The Independent Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The Independent Contractor in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. The Independent Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or

action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- D. The Independent Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Independent Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Independent Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Independent Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Independent Contractor will include the portion of the sentence immediately preceding paragraph 3(A) and the provisions of paragraphs 3(A) through 3(H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States..

XV. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Pursuant to 2 C.F.R. § 200.321, if Independent Contractor subcontracts for work in performance of this Agreement, Independent Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- F. If applicable, requiring subcontractors to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

XVI. Domestic preferences for procurements.

- i. Pursuant to 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, the Independent Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- ii. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- iii. For purposes of this section:
 - (i) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (ii) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

XVII. Procurement of recovered materials.

Pursuant to 2 C.F.R. § 200.323, Independent Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in

guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XVIII. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

- i. County and Independent Contractor are prohibited from obligating or expending funds under this Agreement to:
 - (i) Procure or obtain;
 - (ii) Extend or renew a contract to procure or obtain; or
 - (iii) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
2. Telecommunications or video surveillance services provided by such entities or using such equipment.
3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- ii. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services,

to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

XIX. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

In performance of its agreement with NRCS, where applicable, all contracts awarded by the County in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Independent Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

XX. Debarment and Suspension (Executive Orders 12549 and 12689)

Pursuant to 2 C.F.R. § 180.220, Independent Contractor certifies that it is not listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

XXI. Clean Air Act and Federal Water Pollution Control Act

The Independent Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

XXII. Amendment and Entirety of Contract

This document constitutes the entire agreement between the parties with respect to the subject matter hereto and supersedes all previous proposals, both oral and written, negotiations, representation, commitments, writings, agreements and other communications between the parties. It may not be changed or modified except by an instrument in writing signed by a duly authorized representative of each party.

XXIII. Records

The Independent Contractor will:

- A. Submit all reports and invoices specified in this Agreement.
- B. Retain and contractually require each subcontractor to retain all data and other records relating to the acquisition and performance of this Agreement (hereinafter the “Records”) for a period of (5) years after the termination or completion of this Agreement. If any litigation, claim, dispute or audit is initiated before the expiration of the five (5) year period, the Records will be retained until all litigation, claims, disputes or audits have been finally resolved. All Records will be subject to inspection and audit by the County at reasonable times. Upon request, the Independent Contractor will produce a legible copy of any or all Records.

XXIV. Approval by the District

Before this Agreement can become effective and binding upon the District, it must be approved by the District Board of Directors. In the event that the Board of Supervisors fails or refuses to approve this Agreement, it will be null and void and of no effect whatsoever.

XXV. Waiver

The failure of either party at any time to require performance by the other party of any provisions hereof will in no way affect the party’s subsequent rights and obligations under that provision. Waiver by either party of the breach of any provision hereof will not be taken or held to be a waiver of any succeeding breach of such provision or as waiver of such provision itself.

XXVI. Non-assignment

This Agreement is non-assignable. Any attempt to assign any of the rights, duties or obligations of this Agreement is void.

XXVII. Cancellation of Agreement

This Agreement may be cancelled by the County pursuant to A.R.S. § 38-511.

XXVIII. Non-discrimination

The Independent Contractor will comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations prohibiting discrimination.

XXIX. Notice

Any notice given in connection with this Agreement must be given in writing and delivered either by hand to the party or by certified mail-return receipt to the party’s place of business as set forth above.

XXX. Choice of Law

Any dispute under this Agreement or related to this Agreement will be decided in accordance with the laws of the State of Arizona.

XXXI. Severability

If any part of this Agreement is held to be unenforceable, the rest of the Agreement will nevertheless remain in full force and effect.

XXXII. Authority

Independent Contractor warrants that the person signing below is authorized to sign on behalf of Independent Contractor and obligate Independent Contractor to the above terms and conditions.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date hereinbefore indicated.

NATURAL CHANNEL DESIGN, INC.

COCONINO COUNTY FLOOD CONTROL DISTRICT

By: _____
Allen Haden
President

By: _____
Matt Ryan, Chair
Board of Supervisors

ACKNOWLEDGED before me by Allen Haden as President of and for Natural Channel Design, Inc. on this ____ day of _____, 2021.

ATTEST:

Lindsay Daley
Clerk of the Board

APPROVED AS TO FORM:

Notary Public

Rose Winkeler
Deputy District Attorney

My Commission Expires



Meeting Date: August 3, 2021

DATE: July 30, 2021

TO: Honorable Chairman and Members of the Board of Directors of the County Flood Control District

FROM: Lucinda Andreani, County Deputy Manager/Public Works Director

AGENDA TITLE/SUBJECT:

Consideration and possible action regarding approval of the Fourth Amendment of the Agreement with Tiffany Construction, Inc. and the County Flood Control District adding language relating to federal funding requirements.

RECOMMENDED MOTION:

Approve the Fourth Amendment of the Agreement with Tiffany Construction, Inc. and the County Flood Control District adding language relating to federal funding requirements.

BACKGROUND:

Tiffany Construction, Inc. is assisting the County Flood Control District with flood mitigation work as a result of the post wildfire flooding caused by the 2019 Museum Fire. This submittal is adding language required by the federal government to the on-call Agreement with this firm to comply with grant funding requirements.

ALTERNATIVES:

The following alternatives are available to the Board of Directors:

- Approve this submittal.
- Disapprove this submittal and request an alternative solution.

FISCAL IMPACT:

There is no cost to the Flood Control District for adding this language to the Agreement.

REVIEWED BY ELECTRONIC ROUTING

ATTACHMENTS:

1. Three (3) original Fifth Amendment.
2. Insurance Certificates.

This FOURTH AMENDMENT (hereinafter this "Amendment") is made this ____ day of _____, 2021,

BETWEEN

COCONINO COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, with offices at 219 E. Cherry Avenue, Flagstaff, Arizona 86001 (hereinafter the "District")

AND

TIFFANY CONSTRUCTION, INC., an Arizona corporation, located at 75 Kallof Place, Suite 101, Sedona, Arizona 86336, (hereinafter the "Independent Contractor"),

WHEREAS:

- A. The District and the Independent Contractor entered into an agreement commencing the 1st day of June, 2018, for the Independent Contractor to provide Job Order Contracting (JOC) services RFQ 2018-104, (hereinafter the "Agreement"); and
- B. The Agreement was modified by the First Amendment, Second Amendment and Third Amendment each of which extended the Agreement for one year; and
- C. The parties wish to make certain amendments which will allow the County and Independent Contractor to perform according to a grant to the County from the United States Department of Agriculture, Natural Resources Conservation Service (NRCS).

THEREFORE, in consideration of their mutual promises in the Agreement, the District and the Independent Contractor agree as follows:

- 1. Section (XI) Non-Appropriation of Funds of the Original Agreement is deleted and replaced by:

This Agreement is contingent upon receipt of funding from the NRCS for the work outlined in the Scope of Work, attached to this Fourth Amendment as Exhibit A. In the event funds are not appropriated for this Agreement by the District for any fiscal year following the current fiscal year of the District, the Agreement shall terminate automatically as of the last day for which funds were appropriated. Termination for non-appropriation of funds shall not be considered a default by the District. Upon such termination, the District shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

- 2. The following new section is added: Compliance with NRCS Contract

Independent Contractor understands and agrees that as a condition of receiving funds from the NRCS for the work described in this Amendment, Independent

Contractor, as a subcontractor receiving federal funds, is subject to, and will comply with, the same terms and conditions as the District under the NRCS agreement with the District.

3. The following new section is added: Lobbying

Pursuant to 31 U.S.C. § 1352, the Independent Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Independent Contractor to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the Agreement between the Coconino County Flood Control District and the United States Department of Agriculture Natural Resources Conservation Service for Emergency Watershed Protection, the Independent Contractor shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this certification is a prerequisite for making or entering into this Amendment imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. The following new section is added: Equal Opportunity Clause pursuant to 41 C.F.R. § 60-1.4(b).

During the performance of this contract, the contractor agrees as follows:

- A. The Independent Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for

employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Independent Contractor in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Independent Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The Independent Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Independent Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Independent Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Independent Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by

rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. The Independent Contractor will include the portion of the sentence immediately preceding paragraph 3(A) and the provisions of paragraphs 3(A) through 3(H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States..

5. The following new section is added: Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Pursuant to 2 C.F.R. § 200.321, if Independent Contractor subcontracts for work in performance of this Amendment, Independent Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- F. If applicable, requiring subcontractors to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

6. The following new section is added: Domestic preferences for procurements.

A. Pursuant to 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, the Independent Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

B. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

C. For purposes of this section:

i. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

ii. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7. The following new section is added: Procurement of recovered materials.

Pursuant to 2 C.F.R. § 200.323, Independent Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

8. The following new section is added: Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

A. County and Independent Contractor are prohibited from obligating or expending funds under this Agreement to:

i. Procure or obtain;

ii. Extend or renew a contract to procure or obtain; or

- iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - b. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

B. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

- 9. The following new section is added: Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

In performance of its agreement with NRCS, where applicable, all contracts awarded by the County in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Independent Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work

week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence

10. The following new section is added: Debarment and Suspension (Executive Orders 12549 and 12689)

Pursuant to 2 C.F.R. § 180.220, Independent Contractor certifies that it is not listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

11. The following new section is added: Clean Air Act and Federal Water Pollution Control Act

The Independent Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

12. Terms and conditions of the original Agreement, First Amendment, Second Amendment and Third Amendment that have not been modified by this Fourth Amendment will remain in full force and effect.
13. Authority: Independent Contractor warrants that the person signing below is authorized to sign on behalf of Independent Contractor and obligate Independent Contractor to the above terms and conditions

IN WITNESS WHEREOF the parties hereto have executed this Amendment on the date hereinbefore indicated.

TIFFANY CONSTRUCTION, INC.

COCONINO COUNTY FLOOD CONTROL DISTRICT

By: _____
Herb Tiffany III
President

By: _____
Matt Ryan
Chair, Board of Directors

ACKNOWLEDGED before me by Herb Tiffany III as President of and for Tiffany Construction, Inc. on this _____ day of _____, 2021.

ATTEST:

Lindsay Daley
Clerk of the Board

APPROVED AS TO FORM:

Notary Public

Rose Winkeler
Deputy District Attorney

My Commission Expires