

UNIVERSITY OF ARIZONA
SERVICES AGREEMENT

This Agreement is made as of this _____ day of _____, 2009 between the Arizona Board of Regents (ABOR) for The University of Arizona (UNIVERSITY) and Arizona Municipal Water Users Association, (SPONSOR) a non-profit organization corporation having a principal place of business at 4041 N. Central Avenue Suite 900, Phoenix, AZ 85012, and also known as the Party or Parties.

WHEREAS, SPONSOR desires UNIVERSITY to perform certain services for a project entitled Smartscape ("Project"), and is willing to provide funds for such Project; and

WHEREAS, UNIVERSITY is willing to undertake such Project, and to provide such resources as may be necessary.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, SPONSOR and UNIVERSITY agree as follows:

1. **Project Director**

The Project will be under the supervision and direction of: Summer Waters, a UNIVERSITY employee in Cooperative Extension, Maricopa County.

2. **Billing and Payment**

The SPONSOR will provide UNIVERSITY the sum of \$ 30,000 per fiscal year. The budget and payment schedule are in Exhibit A. This agreement type is:

FIXED PRICE

Invoices will be sent to the following address of the SPONSOR:

Arizona Municipal Water Users Association
4041 N. Central Avenue, Suite 900
Phoenix, AZ 85012

Payment by SPONSOR shall be made within 30 days of receipt of invoices from UNIVERSITY. Checks shall be made payable only to The University of Arizona, and shall identify this Agreement or a UNIVERSITY invoice. Checks should NOT be made payable to or identify individuals. Payments shall be sent to the following addresses:

If sent by US Mail:

The University of Arizona
Sponsored Projects Services
P.O. Box 3520
Tucson, Arizona 85722-3520

If sent by overnight delivery service:

University of Arizona Bursar's Office
888 N Euclid, Room 104
Tucson AZ, 85719
(520) 621-1998

University of Arizona EIN number is 74-2652689.

3. **Scope of Work**

The UNIVERSITY will be responsible for the following activities, which will be conducted through the Cooperative Extension office, Maricopa County:

- A. Implement two 20-hour Smartscape workshop series per fiscal year utilizing established curriculum and local experts to present the workshops.
 - Review and revise content and materials as necessary, integrating current research-based Extension documents.
 - Coordinate efforts with Pima County Extension offices to ensure program consistency.
 - Move venue for one series a year to various areas of the Valley to make program more accessible.
- B. Develop Advanced Smartscape workshops in collaboration with program sponsors and the Pima County Extension. Evaluate previous pilot efforts and revise as appropriate. Implement at least one series of Advanced Smartscape workshops by the end of the second year.
- C. Promote local and national landscape training and certification programs to the landscape industry and promote hiring trained and certified professionals to the public.
 - Assist AMWUA in development of a Smartscape website to promote the program and to provide the public with a database of Smartscape graduates.
 - Develop guidelines to allow Smartscape graduates to market themselves as such, including how businesses may use the logo, etc.
 - Collect information on local and national opportunities for landscape training and certification, including the role each plays and where each fit in the educational hierarchy.

- Assist AMWUA in developing a basic marketing campaign, materials, and website to educate professionals and consumers.
- Serve as the coordinator for this promotional effort, providing information and resources to the industry and public.

Contract Oversight

An advisory committee, comprising representatives of the sponsoring agencies, shall be informed of and consulted regarding program development and implementation. The SPONSOR will have the authority to review the program of work and materials to ensure that the program continues to meet the objectives of the SPONSOR.

Evaluation

Secure evaluations from participants of all workshops and conduct a 6-month follow-up of participants to determine if workshop information has been applied and how.

Deliverables

Biannual reports of contract activities will be completed by the UNIVERSITY and submitted to the SPONSOR no later than January 30th and June 30th each year during the term of Agreement. Summaries of individual workshop evaluations and summaries of six month follow-up surveys shall be included in the biannual reports. The UNIVERSITY shall provide lists of program graduates and contact information to the SPONSOR.

Term of Agreement

This Agreement shall commence on the date of execution of the Agreement and continue through June 30, 2011.

4. Use of Facilities

Insofar as the facilities of UNIVERSITY permit, UNIVERSITY will furnish facilities and such other equipment as may be reasonably required to perform this Agreement except that:

SPONSOR will supply a computer that has hardware and software compatible to the UNIVERSITY network system.

5. Property Administration

Upon termination of this Agreement, any equipment, material, or supplies remaining in stock will become the property of UNIVERSITY.

6. **Insurance and Liability**

The UNIVERSITY maintains general liability insurance and workmen's compensation coverage as required by state law and pertinent federal laws and regulations. In the event SPONSOR undertakes to perform any work on the Project on the premises of UNIVERSITY, then SPONSOR shall give assurances to UNIVERSITY of SPONSOR's adequate general liability insurance and workmen's compensation coverage. It is understood, however, that neither party to this Agreement is the agent of the other and neither is liable for the wrongful acts or negligence of the other.

7. **Reports**

After the Scope of Work is fully performed, and within the time period specified in the Scope of Work, UNIVERSITY will submit to the SPONSOR a detailed technical report of the activities carried out, as required. It is understood, however, that UNIVERSITY shall not be restricted from publishing the results of this Project. When the results of the Project are published, UNIVERSITY agrees to acknowledge the support received from the SPONSOR.

8. **Confidential Information**

SPONSOR and UNIVERSITY may choose, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other. All such disclosures must be in writing and marked as Confidential Information. The Parties will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the other Party and will use such information only for the purposes of this Agreement, and for three (3) years after the termination of this Agreement; provided that the receiving Party's obligations hereunder shall not apply to information that:

- a. is already in the receiving Party's possession at the time of disclosure; or,
- b. is or later becomes part of the public domain through no fault of the receiving Party; or,
- c. is received from a third party with no duty of confidentiality to the disclosing party; or,
- d. was developed independently by the receiving party prior to disclosure; or,
- e. is required to be disclosed by law or regulation.

Any information that is transmitted orally or visually, in order to be protected hereunder, shall be identified as such by the disclosing party at the time of disclosure, and identified in writing to the receiving party, as Confidential Information, within thirty (30) days after such oral or visual disclosure.

9. **Intellectual Property Rights**

Title to any trade secrets, inventions, developments, or discoveries, works of authorship, whether patentable or not (collectively referred to as "Intellectual Property"), resulting directly from the Scope of Work, shall be allocated according to applicable employment contracts and U. S. Patent Law (Title 35 U. S. Code) and U.S. Copyright Law (Title 17 U.S. Code) in effect at the time the Intellectual Property was created. For that Intellectual Property determined to be solely owned by UNIVERSITY, the SPONSOR is granted an option to negotiate a license, on reasonable terms, to such Intellectual Property, such option to be exercised within six (6) months of notification of the Intellectual Property. For that Intellectual Property determined to be jointly owned by SPONSOR and UNIVERSITY, an exclusive option is provided to SPONSOR to negotiate for an exclusive license, on reasonable terms, to UNIVERSITY's rights, such option to be exercised within six (6) months of notification of the Intellectual Property. For that Intellectual Property determined to be solely owned by SPONSOR, UNIVERSITY shall claim no rights. SPONSOR is granted a non-exclusive license, for internal use only, to all original works developed within the Scope of Work for which UNIVERSITY owns the copyright.

10. **Termination**

UNIVERSITY may terminate this Agreement at any time upon thirty (30) days written notice to SPONSOR, if: (a) if cost-reimbursement, funding for the Project is fully expended; or (b) performance of the Project is substantially completed; or (c) if circumstances beyond its control preclude continuation of the Project. SPONSOR may terminate this Agreement at any time upon ninety (90) days written notice to UNIVERSITY, if circumstances beyond its control preclude continuation of the Project. In the event that either Party shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within ninety (90) days after receipt of written notice thereof from the other Party hereto, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party to such effect, and such termination shall be effective as of the date of the receipt of such notice. The defaulting Party shall be responsible for all costs and expenses associated with the termination, and shall reimburse the non-defaulting Party for such.

11. **Arbitration**

In the event of a dispute hereunder that involves the sum of Fifty Thousand Dollars (\$50,000) or less, in money damages only, exclusive of interest, costs and attorneys' fees, the parties will submit the matter to binding arbitration pursuant to the Arizona Arbitration Act, ARS 12-1501, et seq., (the "Act") whose rules shall govern the interpretation, enforcement and proceedings pursuant to this paragraph. Except as otherwise provided in the Act, the decision of the arbitrator(s) shall be final and binding upon the parties.

12. **Conflict of Interest**

This Agreement is subject to the provisions of A.R.S. § 38-511 regarding Conflict of Interest. The State of Arizona may cancel this Agreement if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the Arizona Board of Regents becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Agreement while the Agreement or any extension thereof is in effect.

13. **State Obligation**

The Parties recognize that the performance by the Arizona Board of Regents on behalf of The University of Arizona may be dependent upon the appropriation of funds by the State Legislature of Arizona. Should the Legislature fail to appropriate the necessary funds or if the UNIVERSITY's appropriation is reduced during the fiscal year, the Board of Regents may reduce the scope of the agreement or cancel the agreement without further duty or obligation. The Board agrees to notify the SPONSOR as soon as reasonably possible after the unavailability of said funds comes to the Board's attention.

14. **Notices**

Notices shall be in writing and deemed effective when sent, postage prepaid to:

SPONSOR: Arizona Municipal Water Users Association
4041 N. Central Avenue, Suite 900
Phoenix, AZ 85012

UNIVERSITY:

For U.S. Postal Service:

SPONSORED PROJECTS SERVICES
PO BOX 3308
TUCSON AZ 85722-3308

For Fed Ex, UPS or other expedited delivery:

SPONSORED PROJECTS SERVICES
888 N EUCLID AVE RM 510
TUCSON AZ 85719-4824
Phone (520) 626-6000

15. **General Provisions.**

a. **Compliance**

The Parties agree to comply with the provisions of applicable State and Federal regulations governing Equal Employment Opportunity and Non-discrimination and Immigration.

b. Non-competition

This Project shall not involve competition with local business units that generally offer similar goods and services.

c. Independence

Permission to use UNIVERSITY facilities and other resources under this Agreement does not constitute endorsement by the UNIVERSITY of the SPONSOR's views or objectives.

d. Audit

It is understood that if the ultimate source of at least a portion of the SPONSOR's funds for this project is Federal, this Agreement is subject to Federal Audit.

e. Entire Understanding

This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter hereof.

f. Waiver, Amendment, Modification

No waiver, amendment or modification of this Agreement shall be valid or binding unless written and signed by the Parties. Waiver by either Party of any breach or default of any clause of this Agreement by the other Party shall not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.

g. Assignment

This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided that this Agreement shall be binding upon and inure to each Party's respective successors in interest.

h. Choice of Law

This Agreement shall be interpreted pursuant to the laws of the State of Arizona. Any arbitration or litigation between the Parties shall be conducted in Pima County, Arizona, and SPONSOR hereby submits to venue and jurisdiction in Pima County, Arizona.

i. Severability

If any provision of this Agreement is held void or unenforceable, the remaining provisions shall nevertheless be effective, the intent being to effectuate this Agreement to the fullest extent possible.

j. Independent Contractors

The Parties are deemed independent contractors and may not bind the other, except as provided for herein or authorized in writing by the other Party.

The Arizona Board of Regents for and on behalf of
The University of Arizona

By: _____ Date: _____

Arizona Municipal Water Users Association:

By: _____ Date: _____

Name: _____

Title: _____

I have read this Agreement, and understand the obligations placed on me and my laboratory and other UNIVERSITY employees under my supervision, and agree to be bound by it.

PRINCIPAL INVESTIGATOR

Date: _____

Exhibits: A. Budget

EXHIBIT A

BUDGET AND SCHEDULE OF PAYMENTS

The following budget represents the anticipated costs and funding for conducting the Scope of Work pursuant to this Agreement.

The anticipated dates and amounts of payments is as follows:

<u>DATE</u>	<u>AMOUNT</u>
<u>6/30/2009</u>	<u>\$ 30,000</u>
<u>6/30/2010</u>	<u>\$ 30,000</u>
TOTAL	<u>\$ 60,000</u>