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GILA COUNTY

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Steven L. Besich, County Manager
Clerk of the Board
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PROFESSIONAL SERVICES CONTRACT NO. SS71803D

NEW BRIDGE OVER TONTO CREEK

THIS AGREEMENT, made and entered into this 3rd day of November, **2009**, by and between the Gila County Board of Supervisors, a political subdivision of the State of Arizona, hereinafter designated the **COUNTY,** and Kimley-Horn and Associates, Inc. of the City of Phoenix, County of Maricopa, State of Arizona, hereinafter designated the **ENGINEER**.

WITNESSETH: That the **Engineer**, for and in consideration of the sum to be paid him by the **County**, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE I – SCOPE OF SERVICES: The Tonto Creek Bridge Project shall be completed in phases, Phase I being Design Concept Report and Environmental Studies and Phase II being Final Design of preferred alternative (Plans, Specifications and Estimates).

The Engineer shall not begin work on any phase of the project until the Engineer has received in writing a Notice to Proceed for that particular phase from the County. It is understood by the Engineer that there is no obligation for the County to authorize Phase II if it elects not to, in which case the Contract will terminate upon the completion of Phase I.

The attached ***Scope of Work*** and ***Derivation of Cost Proposal Summary*** by reference are made a part of this Contract to the same extent as if set forth herein in full.

Phases I and II

PHASE I - Scope of Services includes the following tasks:

410 - Project Team Meetings
415 - Data Collection
420 - Surveys & Mapping
425 - Administrative Reports
430 - Project Scoping
440 - Alternatives Analysis & Selection
450 - Technical Reports
465 - Initial Design Concept Report
470 - Draft Environmental Document
480 - Final Reviews & Approvals
490 - Final Design Concept Report
495 - Final Environmental Document
500 - 30% Plans & Estimates
600 - Contract Administration

PHASE II - Scope of Services includes the following tasks:

410 – Project Team Meetings
420 – Surveys & Mapping
550 – Final Design 60%, 95%, 100%

ARTICLE II – INDEMNIFICATION CLAUSE: Engineer shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, in whole or in part, by the negligent or willful wrongful acts or omissions of Engineer or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Engineer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Engineer from and against any and all claims arising from its services under this Contract. It is agreed that the Engineer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable and that Engineer shall defend the claims that appear to fall within the scope of the indemnification, even though Engineer is subsequently found not liable under this Indemnification. In consideration of the award of this contract, the Engineer agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Engineer for the County.

ARTICLE III - INSURANCE REQUIREMENTS: Engineer 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 Engineer, 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 County in no way warrants that the minimum limits contained herein are sufficient to protect the Engineer from liabilities that might arise out of the performance of the work under this contract by the Engineer, his agents, representatives, employees or subcontractors and Engineer is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE**: Engineer shall provide coverage with limits of liability not less than those stated below.

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 County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Engineer".**

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. Policy shall contain a **waiver of subrogation** against the County of Gila.

3. **Professional Liability (Errors and Omissions Liability)**

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, Engineer 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 County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Engineer even if those limits of liability are in excess of those required by this Contract.
2 The Engineer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Engineer shall not be limited to the liability assumed under the indemnification provisions of this Contract.

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, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to Steve Stratton, 1400 E. Ash St., Globe, AZ 85501 and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Engineer from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Engineer shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) 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 endorsements are to be received and approved by the County 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 Steve Stratton, 1400 E. Ash St., Globe, AZ 85501. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Engineers' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Engineer shall furnish to the County separate certificates and endorsements for each subcontractor. All coverage's 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 County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

ARTICLE IV – LEGAL ARIZONA WORKERS ACT COMPLIANCE: Engineer hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Engineer's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Engineer shall further ensure that each subcontractor who performs any work for Engineer under this contract likewise complies with the State and Federal Immigration Laws.

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

Any breach of Engineer's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Engineer to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Engineer shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to Engineer approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

Engineer shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

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

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

ARTICLE V – SCHEDULE & FEES: The schedule for Phase I is anticipated to be eighteen (18) months from Engineer receipt of County provided Notice to Proceed. See attached Derivation of Cost Proposal Summary for estimated staff hour's breakdown.

The Schedule for Phase II is anticipated to be six (6) months from finalization and approval of the Design Concept Report and Environment Studies. Fees for Phase II are described in the attached Derivation of Cost Proposal Summary.

DERIVATION OF COST PROPOSAL SUMMARY

(Figures Rounded to the Nearest $1)

ESTIMATED DIRECT LABOR

CLASSIFICATION	PERSON HOURS	BILLING RATE/HOUR	TOTAL
Project Principal	73	$ 220.00	$ 16,060
Project Manager	1,413	$ 190.00	$ 268,470
Senior Project Engineer	924	$ 188.00	$ 173,712
Project Engineer	1,849	$ 148.00	$ 273,652
Engineer/Designer	1,250	$ 130.00	$ 162,500
Analyst	1,903	$ 98.00	$ 186,494
Senior NEPA Planner	826	$ 165.00	$ 136,290
NEPA Planner	1,027	$ 115.00	$ 118,105
Tech/Draftsman	1,449	$ 125.00	$ 181,125
Administrative	111	$ 95.00	$ 10,545
Clerical	264	$ 65.00	$ 17,160
	11,089		
Estimated Labor Cost			**$ 1,544,113**

ESTIMATED DIRECT EXPENSES (No Markup)

Total Estimated Expenses **$ 33,042**

ESTIMATED OUTSIDE EXPENSES

FIRM	COST	COMPENSATION METHOD
Logan Simpson Design	$ 317,120	LSUM
ACS	$ 130,052	LSUM
JE Fuller	$ 79,652	LSUM
AMEC	$ 267,051	LSUM
Alpha	$ 52,600	LSUM
Appraiser – Dennis Lopez	$ 10,000	LSUM
Total Estimated Outside Services		**$ 856,475**

TOTAL ESTIMATED COST TO CONSULTANT **$ 2,433,630**

Allocation Expense @ 3.8% of Labor **$ 58,676**

TOTAL ESTIMATED LSUM FEE **$ 2,492,306**

Contract Time 730 Calendar Days

ARTICLE VI – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Engineer shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Engineer. The Engineer shall comply with the 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.

ARTICLE VII – ANTI-TERRORISM WARRANTY: Pursuant to **A.R.S. §35-397** the Supplier certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

ARTICLE VIII – CANCELLATION: This agreement is subject to cancellation pursuant to **A.R.S. § 38-511.** If the Agreement is terminated, the county shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination. The Engineer shall be considered in default of this contract and such default will be considered as cause to terminate the contract for any of the following reasons if the Engineer:

a. Fails to perform the work under the contract within the time specified in the "Notice to Proceed"; or
b. Fails to perform the work or fails to provide sufficient workers, equipment or data to assure completion of work in accordance with the terms of the contract; or
c. Performs the work unsuitably or neglects or refuses to follow the Scope of Work; or
d. Discontinues the prosecution of the work; or
e. Fails to resume work which as been discontinued within a reasonable time after notice to do so; or
f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
g. Makes assignment for the benefit or creditors.
h. If it is found that gratuities were offered or given by the Engineer or any agent or representative of the Engineer, to any officer or employee of the County.

ARTICLE IX – PAYMENT: The Scope of Services as outlined above will be performed on a lump sum basis with a not-to-exceed without written authorization budget of **$ 1,744,997.00** **for Phase I** and **$ 747,309.00** **for Phase II** for a **Total Cost of** **$ 2,492,306.00**.

Prior to Phase II services, the Engineer and the County will review and refine the scope of services for that Phase, as may be required as a result of design, scope, and management decisions made during Phase I. The Phase II scope and fee may be renegotiated and additional or deleted work, as agreed upon and authorized by the County, will be performed on a Time and Materials basis per a mutually agreed upon scope and fee between the County and the Engineer. It is understood that there is no obligation for the County to authorize Phase II if it elects not to, in which case the Contract will terminate upon the completion of Phase I.

Compensation shall follow guidelines for **A.R.S. §34-221.** Each invoice must include itemized task and dollar figure for each task completed. Each invoice must show a signature by the county representative confirming services rendered and authorizing payment.

IN WITNESS WHEREOF, three (3) identical counterparts of this contract, each which shall include original signatures and for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

In return for the performance of the Contract by the **Engineer** the **County** agrees to pay the amount of not more than $ 2,492,306.00 including all applicable taxes through a payment schedule as described in the Contract documents and as may be modified and executed by change orders.

PROFESSIONAL CONSULTING SERVICES CONTRACT NO. SS71803D
NEW BRIDGE OVER TONTO CREEK DESIGN

GILA COUNTY:

GILA COUNTY BOARD OF SUPERVISORS

Shirley L. Dawson, Chairman, Board of Supervisors

ATTEST

Steven L. Besich, County Manager / Clerk

APPROVED AS TO FORM:

Bryan B. Chambers, Chief Deputy County Attorney
***for* Daisy Flores, County Attorney**

KIMLEY-HORN AND ASSOCIATES, INC.

Signature of Engineer

DAVID J LEISTIKO

Print Name