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GILA COUNTY

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PROFESSIONAL CONSULTING SERVICES CONTRACT NO. 6511.526/10-2010

TONTO CREEK BRIDGE

THIS AGREEMENT, made and entered into this 14th day of December, 2010, by and between the Gila County Board of Supervisors, a political subdivision of the State of Arizona, hereinafter designated the **COUNTY**, and C.L. Williams Consulting, Inc. of the City of Pinetop, County of Navajo State of Arizona, hereinafter designated the **CONSULTANT**.

WITNESSETH: That the Consultant, 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: Gila County is currently planning for a new bridge across Tonto Creek near Punkin Center south of Payson. This will be a new crossing as well as the associated access roadway. The County has obtained an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation to provide funding. Given the nature of the funding, the project will also be submitted for review to the Federal Highway Agency (FHWA). The scope of the project includes: necessary survey and right-of-way, various engineering studies, environmental permitting studies, preliminary engineering, design concept reports and final design documents.

The Consultant will assist the County in the technical review and support during the permitting, concept design, agency coordination, and final design phase of the project.

In accordance with this project understanding, Consultant proposes to complete the Tonto Creek Bridge Technical Support Services in accordance with the following Scope of Services:

Technical Review Services: Environmental Permitting, Design Concept Report (DCR) and Plans, Specifications & Estimates (PS&E)

TASK 1: Data Collection, Coordination and Meetings

Consultant will support the County during development of the necessary federal environmental permits, DCR and the actual design phase of the PS&E for the project by providing necessary technical review services. The Consultant will work closely with the design consultant to ensure that all necessary project elements are clearly understood and addressed. Review of the structural engineering elements of the bridge structure will either be performed by ADOT or by a qualified structural engineering sub consultant to the Consultant.

The work under this task will include all necessary agency coordination, design criteria assistance, review of environmental permitting and design submittals (design plan submittals at the 30, 60, 90, and 95-percent design stage) and all supporting design documentation required for the project. The Consultant anticipates that all required coordination will occur at the County's Globe Office or at the project site near Punkin Center.

Consultant will be responsible for coordinating all technical data submittal needs with the design consultant and affected agencies. The Consultant will be responsible for supporting the County Project Manager regarding stakeholder coordination and public involvement as those efforts are conducted by the design consultant.

At a minimum the following meetings will be required to meet the goals and objectives of the design and post-design phase of the project:

1. Monthly progress meetings with the County Project Manager, Consultant Project Manager and other necessary stakeholders/agencies to review the project progress including any issues.
2. Technical submittal and comment response meetings to cover the results of the technical review performed at each environmental permitting or design submittal stage (30, 60, 90, and 95-percent).

The design consultant will coordinate directly with the Consultant Project Manager on technical issues and the Consultant Project Manager will provide summaries and action item lists for the County Project Manager as needed.

Additional coordination with other stakeholders such as the ADOT, FHWA, Tonto National Forest...etc. are also included within this task and assume that any and all required coordination will either occur in Phoenix or the County's Globe Office.

The Consultant Project Manager will attend all meetings and inform the County by telephone, fax or e-mail on progress relating to the project.

TASK 2: Technical Reviews – Environmental Permits, DCR and Design Phase

Consultant will conduct technical reviews of the environmental permit documents and DCR and will issue written list of items that need to be addressed by the design consultant. The design consultant will be

required to follow ADOT DCR report format criteria and the reviews will be performed by a registered professional engineer.

Technical reviews will be performed using primarily design standard, details and specifications of the ADOT to ensure consistency and to reduce possible FHWA review delays.

Once the Environmental Permit and DCR have been completed, the Consultant will provide technical review services of the PS&E. Given the terms of the IGA it is assumed that the design consultant will develop the plans using MicroStation. Specifications will be required to follow, in general, ADOT’s 2008 Standard Specifications for Road and Bridge Construction and therefore may require use of ADOT standard special provisions for the bidding document. The estimate will, in general, follow ADOT cost development practices.

On receipt of each submittal the reviewer will issue comments within fourteen (14) calendar days and the design consultant will have fourteen (14) days to provide a written response.

TASK 3: Deliverables

Consultant will provide the County Project Manager with one (1) copy of all submitted documentation by the design consultant including all e-mails, meeting summary notes, records and general correspondence between any involved stakeholders.

ASSUMPTIONS USED TO DEVELOP THIS SCOPE

The following assumptions were used to develop the above scope of work for this project.

1. The project schedule consists of the following:
 - a. Six to eight (6-8) months for the Design Concept Report development, review, coordination, meetings and approval.
 - b. Eight to twelve (8-12) months for the Environmental Assessment (EA).
 - c. No delay between DCR approval and PS&E development.
 - d. Twelve (12) months for the PS&E phase. This will begin once the EA is issued.
2. PS&E will be done in accordance with ADOT and FHWA requirements.
3. Plan submittals will be made using Adobe Acrobat (.pdf).

CONTRACT TIMELINE HISTORY

The Consultant has been involved in the Tonto Bridge project since 2007. Due to their extensive knowledge and involvement with the project it is beneficial to the County to continue with the same Consultant.

<u>Contract No.</u>	<u>PO Amount</u>	<u>Description</u>
6510.341.526/4-2009	\$19,646.00	Phase I - Scope of Work
"	\$80,000.00	Phase II – Time & Material
"	\$1,867.50	Remaining on PO as of 10-8-10

ARTICLE II – INDEMNIFICATION CLAUSE: Consultant 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 caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant 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 Consultant 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 Consultant from and against any and all claims. It is agreed that the Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant 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 Consultant for the County.

ARTICLE III - INSURANCE REQUIREMENTS: Consultant 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 Consultant, 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 Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees or subcontractors and Consultant is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Consultant 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 Consultant".**

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, Consultant 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 Consultant even if those limits of liability are in excess of those required by this Contract.
2. The Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Consultant 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 Consultant from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Consultant 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:** Consultants' certificate(s) shall include all subcontractors as additional insured's under its policies or Consultant 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: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Consultant's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Consultant shall further ensure that each subcontractor who performs any work for Consultant 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 Consultant and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Consultant'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 Consultant 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, Consultant 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 Consultant approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

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

ARTICLE V – SCHEDULE & FEES: Upon receipt of the Notice to Proceed and the information to be provided by the County, it is anticipated that completion of these services will be done in accordance with the schedule provided within the assumptions portion of this Scope of Services.

The services will be provided to Gila County on a Time and Materials (T&M) and not-to-exceed fee basis based on the 2007 Consultant fee rate schedule.

The Consultants fee schedule for the tasks outlined in the Scope of Services is as follows:

Technical Review – Environmental Permits, DCR and PS&E		
Task Number	Task Description	Fee
1	Data Collection, Coordination and Meetings	T&M
2	Technical Reviews – Environmental Permits, DCR and PS&E	T&M
3	Deliverables	T&M
Total		\$ 119,000

Contract term shall be in effect from date approved by Board of Supervisors and ending October 31, 2011.

ARTICLE VI – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Consultant shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant. The Consultant 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 – A.R.S.§35-397: Pursuant to A.R.S.§35-397 the Contractor certifies that it does not have scrutinized business operations in Iran or Sudan.

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 Consultant 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 Consultant:

- 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 **\$119,000.00**. Additional work, as authorized, will be performed on a Time and Materials basis per a mutually agreed upon fee between the County and the Consultant.

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 Consultant, the County agrees to pay the amount of not more than \$ 119,000.00 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. 6510.526/10-2010
TONTOKREEK BRIDGE

GILA COUNTY:

C.L. WILLIAMS CONSULTING, INC.:

GILA COUNTY BOARD OF SUPERVISORS



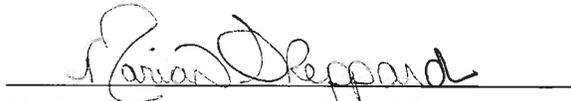
Michael A. Pastor, Chairman, Board of Supervisors



Signature of Consultant

CHARLES L. WILLIAMS
Print Name

ATTEST



Marian Sheppard, Deputy Clerk of the Board

APPROVED AS TO FORM:



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