

Tommie C. Martin, District I
P.O. Box 2297 Payson, AZ. 85547
(928) 474-2029

Michael A. Pastor, District II
1400 E. Ash St. Globe, AZ. 85501
(928) 425-3231 Ext. 8753

John Marcanti, District III
1400 E. Ash St. Globe, AZ. 85501
(928) 425-3231 Ext. 8753



Don E. McDaniel, Jr., County Manager
Phone (928) 425-3231 Ext. 8761

Jeff Hessenius, Finance Director
Phone (928) 402-8743

FAX (928) 425-0319
TTY: 7-1-1

GILA COUNTY
www.gilacountyaz.gov

GILA COUNTY
PROFESSIONAL SERVICES CONTRACT NO. 031816
TONTO CREEK SOUTHWESTERN WILLOW FLYCATCHER AND WESTERN YELLOW-
BILLED CUCKOO SURVEYS

THIS AGREEMENT, made and entered into this 6th day of April, 2016, by and between Gila County, a political subdivision of the State of Arizona, hereinafter designated the **COUNTY**, and Archaeological Consulting Services, Ltd. of the City of Tempe, County of Maricopa, 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 WORK: Refer to attached Attachment “A” by mention made a binding part of this agreement as set forth herein. The scope is for Project No. TCB-ENV, Tonto Creek Bridge Environmental, to conduct surveys for the endangered Southwestern Willow Flycatcher (SWFL) and the Western Yellow-billed Cuckoo (YBCU), along Tonto Creek near Punkin Center, Gila County, Arizona. In order to stay compliant with federal requirements, prior to the commencement of construction, a study has to be conducted for three continuous years. Archaeological Consulting Services, Ltd. has been doing the study under contract with Kimley Horn for the bridge since July 2009.

- Archaeological Consulting Services, Ltd. (ACS) will follow the Sogge et al SWFL and Halterman et al YCBU survey Protocols when conducting surveys. Tracy McCarthy and Laura Stewart of ACS have extensive experience conducting surveys under this protocol and within the project area.
- ACS will conduct protocol surveys for SWFLs and YBCUs, 0.5 mile upstream and downstream of the proposed bridge location near Punkin Center.
- The scope includes five (5) survey visits per protocol for the Southwestern Willow Flycatcher, and four (4) survey visits per protocol for the Western Yellow-billed Cuckoo, spaced out within the three established surveys periods, during the SWFL and YCBU breeding seasons
- Costs have also been included for a separate survey visit in case weather conditions are not favorable on one of the seven visits. Surveys for these species can only be conducted with minimal wind and rain conditions according to protocol. The cost for the make-up visit will be deducted from the total contract amount if the visit is not necessary.
- Results of the surveys will be summarized in a brief report, which will include the survey forms, and will be submitted to the Arizona Game and Fish Department, the US Fish and Wildlife Service, and the US Forest Service.

ARTICLE II – COST SUMMARY:

Project Cost Summary Table	
▪ Seven (7) Surveys.....	\$18,800.48
▪ Make-Up Survey.....	\$1,721.83
▪ Total Estimated Budget.....	\$20,522.31

ARTICLE III – 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 IV - 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 Engineer 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. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language:

The County of Gila shall be named as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

4. 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 **Jeannie Sgroi, 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 **Jeannie Sgroi, 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 V – 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 Contractor’s employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). Contractor shall further ensure that each subcontractor who performs any work for Contractor 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 Contractor and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.

Any breach of Contractor’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 Contractor 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, Contractor 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 as soon as possible so as not to delay project completion.

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

ARTICLE VI – CANCELLATION: This agreement is subject to cancellation pursuant to **A.R.S. § 38-511**. 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 or fails to provide sufficient workers, equipment or data to assure completion of work in accordance with the terms of the contract; or
- b. Performs the work unsuitably or neglects or refuses to follow the Scope of Work; or
- c. Discontinues the prosecution of the work; or
- d. Fails to resume work which as been discontinued within a reasonable time after notice to do so; or
- e. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
- f. Makes assignment for the benefit or creditors.

ARTICLE VII – PAYMENT: For and in consideration of the performance of the services of the work herein described in Attachment “A”, the **County** agrees to pay the **Consultant** a rate of **\$20,522.31** for the services as identified in **Article II-COST SUMMARY**, Project Cost Summary Table. **Consultant** shall submit monthly invoices, following the last day of the month for services performed and expenses incurred during the billing period. The term of this contract shall commence on the date signed by the County Manager and shall remain in effect for a period of twelve (12) months unless terminated, canceled, or extended as otherwise provided herein. The Contractor agrees that the County shall have the right, at its sole option, to renew the contract for two (2) additional one (1) year periods. In the event the County exercises such a right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period.

ARTICLE VIII – TERMINATION OF CONTRACT: Either party, in writing, may terminate this contract in whole, or in part, at any time before the date of expiration. Neither party shall incur any new obligations for the terminated portion of this contract after the effective date and shall cancel as many obligations as is possible. Full credit shall be allowed for each party’s expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

IN WITNESS WHEREOF, two (2) 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.

GILA COUNTY
PROFESSIONAL SERVICES CONTRACT NO. 031816
TONTOK CREEK SOUTHWESTERN WILLOW FLYCATCHER AND WESTERN YELLOW-
BILLED CUCKOO SURVEYS

GILA COUNTY


Don E. McDaniel Jr., County Manager

Date: 4/6/16

ARCHAEOLOGICAL CONSULTING SERVICES, LTD.


Signature

Margerie Green
Print Name



Archaeological Consulting Services, Ltd.
 Cultural Resource, Environmental Management, and GIS Services
 a woman-owned business enterprise, established 1977

424 West Broadway Road
 Tempe, AZ 85282-1339
 (480) 894-5477 • FAX (480) 894-5478
 www.acstempe.com

22 March 2016
 ACS Project 15-243

Jeannie Sgroi
 Gila County Finance Department
 Contracts Support Specialist
 1400 E. Ash Street
 Globe, AZ 85501

RE: Proposal for 2016 Southwestern Willow Flycatcher and Western Yellow-billed Cuckoo Surveys along Tonto Creek near Punkin Center, Gila County, Arizona

Dear Ms. Sgroi:

Thank you for contacting Archaeological Consulting Services, Ltd. (ACS) regarding surveys for the endangered southwestern willow flycatcher (SWFL) and threatened western yellow-billed cuckoo (YBCU) along Tonto Creek near Punkin Center, Gila County, Arizona. ACS will conduct protocol surveys for SWFLs and YBCUs 0.5 mile upstream and downstream of the proposed bridge location near Punkin Center. This proposal includes costs for surveys in 2016 only.

Scope of Work

ACS personnel will follow the Sogge et al. SWFL and Halterman et al YBCU Survey Protocols when conducting surveys. Tracy McCarthy and Laura Stewart have extensive experience conducting surveys under these protocols and within the project area. We have overlapped the survey visits required in the survey protocols as much as possible; however because of the timing of the survey periods were only able to overlap two of the survey visits. Therefore, we have included seven survey visits per protocol (five WIFL and four YBCU) spaced out within the three established surveys periods during the SWFL and YBCU breeding seasons.

We have also included costs for a separate survey visit in case weather conditions are not favorable on one of the seven visits. Surveys for these species can only be conducted with minimal wind and rain conditions according to protocol.

Results of the surveys will be summarized in a brief report, which will include the field survey forms, and will be submitted to the Arizona Game and Fish Department, the US Fish and Wildlife Service, and the US Forest Service.

Cost Estimate and Schedule

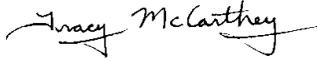
The estimated lump sum cost for the 2016 survey effort with separate weather make up survey is below.

Year	2016
7 Surveys	\$18,800.48
Make-up Survey	\$1,721.83
Total	\$20,522.31

The SWFL and YBCU breeding seasons extend through August; therefore, we will submit our draft report to Gila County for review by October 1st. This proposal is valid for 60 days.

Please do not hesitate to call if you have any questions. We look forward to working with Gila County again.

Sincerely,

A handwritten signature in black ink that reads "Tracy McCarthy". The signature is written in a cursive style with a large, stylized 'T' and 'M'.

Tracy McCarthy
Director, Environmental Division / Senior Biologist

Copy: Shannon Coons