



**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

(Authorizing a Professional Service Agreement between the White Mountain Apache Tribe and Natural Channel Design, Inc.)

WHEREAS, pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, the Watershed Program of the Tribe's Division of Natural Resources has this day requested approval of a professional services agreement between the White Mountain Apache Tribe and Natural Channel Design, Inc. for a term of one week; and

WHEREAS, Watershed desires NCD to provide training for technical staff in survey and assessment protocols for the inventory, assessment, and monitoring of natural stream channels on the Fort Apache Indian Reservation; and

WHEREAS, the proposed training will include both classroom lectures and extensive field exercises in which data will be collected from these assessments, as well as staff training in analysis and evaluation of data by developing a localized database on the collected information; and

WHEREAS, all data within the Watershed, Hydrology and Water Resources Programs will remain confidential and protected; and

WHEREAS, the Tribal Council concurs with the request made herein and finds that the agreement should be authorized, subject to review by the Tribe's Legal Department and available funding.

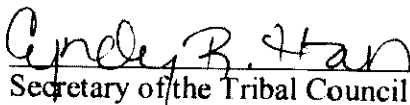
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that a professional services agreement between the Tribe and Natural Channel Design, Inc., contractor, and the White Mountain Apache Tribe, for a term of one week.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairwoman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on March 11, 2008, duly adopted by a vote of NINE for, ZERO against and ONE abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (f), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council

PROPOSAL

REF # 08-07
March 6, 2008

SUBMITTED TO: JoAnn Sedillo, Watershed Program Manager
White Mountain Apache Tribe (WMAT)
P.O. Box 2109
Whiteriver, AZ 85941

SUBMITTED BY: Natural Channel Design, Inc. (NCD)
206 S. Elden St
Flagstaff, AZ 86001

PROJECT NAME: Inventory & Assessment of Natural Stream Channels Workshop

PROJECT DESCRIPTION/PURPOSE:

The purpose of the workshop is to provide training for WMAT technical staff in survey and assessment protocols for the inventory, assessment, and monitoring of natural stream channels. The workshop includes both classroom lecture and extensive field exercises. The 4 ½ day workshop will be conducted in facilities on the WMAT tribal lands utilizing local field sites.

SCOPE OF SERVICES:

0. Conduct workshop

A 4-day workshop will be conducted on the White Mountain Apache Tribe during April 28 – May 2, 2008. This task includes the preparation of all materials for the workshop, 2 staff to conduct the workshop, and all travel expenses. NCD will provide workshop materials, survey equipment, field forms, lecture presentations, and projector. WMAT is responsible for the classroom facilities, screen, location of all field sites, and transportation to and from field sites.

Cost:

\$12,000

SCHEDULE:

The workshop is scheduled for the period of April 28 through May 2, 2008

MANNER OF PAYMENT:

Payment will be invoiced upon completion of the training and due upon receipt.

Workshop II. Inventory, Assessment, & Monitoring of Natural Channels in the Arid Southwest

A 4 1/2 day workshop designed to introduce participants to practical field protocols for inventory, assessment, and monitoring physical characteristics of stream channels. Workshop will begin at 9 am on Monday morning and end at noon on Friday.

The Natural Channel Inventory and Assessment training module is designed to introduce field personnel to:

1. The use of the David Rosgen's Natural Channel Classification System
2. Specific examples of channel types in Arizona, Utah, and New Mexico
3. Field techniques for channel classification surveys
4. How to recognize and measure channel stability parameters
5. Stream assessment methodologies
6. Field techniques for channel assessments
7. Methods for assessing adequate sediment transport in stream systems
8. Objectives and field techniques for monitoring

Natural Channel Design workshops are based the geomorphic approach initiated by Luna Leopold and others in the USGS and includes the stream classification and assessment techniques developed by David Rosgen of Wildland Hydrology. The workshop also integrates the more traditional engineering and hydraulic concepts into the geomorphic principles as appropriate. While many of the course's concepts apply to natural channels across the country, these workshops rely on the instructors' specific research experience in the river systems of Arizona, New Mexico, and Utah. The workshop includes classroom lectures and hands-on field training.

Class size is limited in size to increase the hands on nature of the training. No other formal training is required although field experience with natural channels will be very beneficial. The course is designed to provide participants with understanding and tools to make accurate, consistent stream assessments as part of their duties. Classroom instruction includes applied exercises in characterizing and assessing natural channels. Field time includes hands-on experience with all field measurements.

Instructor

Tom Moody is a licensed civil engineer and owner of Natural Channel Design, Inc. (NCD), a consulting firm specializing in inventory, assessment, and restoration design of natural channels in the southwest. Tom has performed stream assessments, restoration designs and construction for perennial and ephemeral channels in Nevada, Arizona, Utah, and New Mexico. Over the past 6 years he has conducted research on stream systems and watershed science in the arid regions of Arizona and New Mexico. He co-authored the subsequent reports titled: "Regional Relationships of Bankfull Discharge in Natural Channels of Central Arizona" and "Stream Channel Morphology in New Mexico: Regional Relationships". He served as principal investigator on a project to validate the Bank Erodibility Hazard Index, a bank erosion rate model, in New Mexico and the Navajo Nation. He is a third generation Arizonan and resides in Flagstaff, Arizona with his wife, Stephanie Yard, and son.

Workshop II. Inventory, Assessment, & Monitoring of Natural Channels in the Arid Southwest

Tentative Course Schedule

Day 1:

9:00 am - 12:00 pm Fundamentals of natural channels

- Bankfull discharge, stream stability, importance of dimension, pattern, & profile, regional relationships of natural channels in the southwest.
- Channel form and function. Channel stability, Channel evolution, Bankfull channel and floodplain processes, energy dissipation, sediment transport.

1:00 pm - 5:00 pm Identification of Bankfull Stage

- Bankfull channel and floodplain features, bankfull indicators, bankfull survey protocols, use of regional curves.
- Protocols for field surveys including Cross-sectional surveys, longitudinal profiles, and bed material characterization

Day 2: Field Day (bring sack lunch and waders)

8:00 am - 5:00 pm Identification of bankfull stage at an ungaged site
Participants conduct a bankfull survey at a field site

Day 3:

8:00 am - 11:30 pm Analysis of field data collected on Day 2

11:30 am - 12:30 pm Classification of natural channels

- Rosgen classification system. Delineative criteria: width-depth ratio, entrenchment ratio, stream slope, sinuosity, and bed materials characterization.

1:00 pm - 3:00 pm Assessment techniques: Level I

- Channel type, channel stability
- Bank stability, vegetation

3:00 pm - 5:00 pm Assessment techniques: Level II

- Using regional data for assessment
- Assessing a Reference Reach
- Reach assessment

Day 4: Field Day (bring sack lunch and waders)

8:00 am - 12:00 pm Field surveys

- Level I & II assessment procedures.

1:00 pm - 4:00 pm Analyze field data,

4:00 pm - 5:00 pm Monitoring Protocols

Day 5:

8:00 am - 10:00 am Evaluating monitoring data

Planning & Restoration Design

10:00 am - 12:00 pm General discussion

Equipment needed: Pencils, clipboard, hand calculator, metric ruler, daypack for field work, laptop computer with MS Excel (1 per 2 participants), and boots or hip waders.

PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2008 by and between the WHITE MOUNTAIN APACHE TRIBE, hereinafter referred to as "**TRIBE**", and Tom Moody, hereinafter referred to as "**CONTRACTOR**."

WHEREAS, TRIBE desires CONTRACTOR to perform certain professional technical services on its behalf, and CONTRACTOR desires to perform the same for compensation in accordance with the terms and conditions set forth herein.

THE PARTIES HERETO AGREE AS FOLLOWS:

1. IDENTIFICATION OF THE PROJECT

The Project is identified as Inventory, Assessment, & Monitoring of Natural Channels in the Arid Southwest Training

2. IDENTIFICATION OF TRIBE

TRIBE is identified as **WHITE MOUNTAIN APACHE TRIBE**
 P.O. Box 2109
 Whiteriver, AZ 85941

Contact person(s): JO ANN SEDILLO, Watershed Program Manager
 CHERYL PAILZOTE, Tribal Hydrologist

3. IDENTIFICATION OF CONTRACTOR

CONTRACTOR is identified as: **TOM MOODY**
 Natural Channel Design, Inc. (NCD)
 206 S. Elden St.
 Flagstaff, AZ 86001
 (928) 774-2336

4. CHANGE OF ADDRESS

Either party may change the address, phone number, fax number or name of the contact person by written notice to the other party.

5. SCOPE OF WORK

CONTRACTOR shall perform work in accordance with the Project Scope of Work, attached hereto and made a part hereof as Attachment A. Future work tasks may be developed as necessary and will require agreement by the TRIBE and CONTRACTOR and will become part of the Agreement.

6. FEE FOR SERVICES

CONTRACTOR shall be paid for services rendered as shown in Attachment B, Payment for Services. The sum shown in Attachment B is the maximum expenditure that will be made under this Agreement for the total of all expenses connected with the work unless TRIBE agrees to formally amend this Agreement in writing to some greater figure based upon an extension of the contract time through no fault of CONTRACTOR or additional services agreed by TRIBE prior to CONTRACTOR providing said services.

7. PAYMENT FOR SERVICES

TRIBE agrees to pay CONTRACTOR upon completion of the training and is due upon receipt as set forth in Attachment B, Payment for Services.

8. STANDARD OF PROFESSIONAL CARE

Services performed by CONTRACTOR shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by other members of the profession currently practicing in the United States. All services required hereunder shall be performed by CONTRACTOR.

9. CONFIDENTIALITY AND OWNERSHIP OF TRIBAL INFORMATION

CONTRACTOR consents to conditions of confidentiality and ownership of Tribal information as set forth in Attachment C, Confidentiality Policy.

10. CONTRACT PERIOD

Services to be performed by CONTRACTOR under this Agreement will commence after signing of this Agreement by both parties and upon authorization by TRIBE to proceed (no sooner than April 21, 2008). The services under this Agreement shall conclude upon completion of the Project (no later than May 5, 2008).

11. CHANGE OF SCOPE OR EXTENSION OF TIME

Changes to the scope of work or the payment schedule or the time required to do the work shall not be made except as mutually agreed upon in writing and included as an amendment to this Agreement.

12. SUBCONTRACTING

Work or services required by this Agreement may not be subcontracted by CONTRACTOR without the prior written consent of TRIBE.

13. INDEMNIFICATION

CONTRACTOR shall indemnify and hold TRIBE harmless from any claims, demands, liabilities, actions, suits, or proceedings arising out of any negligence, omission, or breach of any condition, of this Agreement by CONTRACTOR or any of CONTRACTOR'S employees, agents or representatives. Such indemnity shall include not only any ultimate judgment, but any and all expenses, including reasonable attorney's fees, incurred by the indemnified part in conjunction with any threatened or actual proceeding or legal proceeding arising hereunder.

14. RELATIONSHIP OF PARTIES

CONTRACTOR is an independent contractor to TRIBE and shall not be considered an employee of TRIBE for any purpose. Except as may be expressly provided herein, TRIBE and CONSULTANT shall have no power to control the activities or operations of the other, or to bind or commit the other party, and CONSULTANT shall not use trade names, trademarks, logos or seals of TRIBE except with TRIBE's prior written approval.

15. RIGHT OF ENTRY

TRIBE shall provide right of entry for CONTRACTOR in order to complete the work under this Agreement. CONTRACTOR shall take every precaution to minimize any damage to persons or property. CONTRACTOR shall be responsible for the safety of its own employees or anyone else who may be affected by operations which are under CONTRACTOR'S control.

16. TERMINATION OF AGREEMENT FOR CAUSE

If either party shall fail to fulfill its obligations under this Agreement in a timely and proper manner, or if either party shall violate any of the covenants, agreements or stipulations of this Agreement, the other party shall have the right to terminate the services provided under this Agreement if such default or violation is not corrected within fifteen (15) days after submitting notice to the breaching party.

17. TERMINATION FOR CONVENIENCE OF TRIBE

TRIBE may terminate the services provided under this Agreement in whole or in part at any time for its own convenience. Such termination shall require written notice by the TRIBE to CONTRACTOR. If terminated, CONTRACTOR shall stop work on the date of notice and shall be compensated for all allowed costs through the date of termination.

18. CESSATION OF EFFORTS

If written notice of termination of Agreement is received by either party pursuant to paragraphs 16 or 17, CONTRACTOR and all subcontractors shall immediately cease all efforts under this Agreement and shall be compensated for approved services performed through the date of termination. CONTRACTOR shall turn over to TRIBE all documents, data, studies, surveys, drawings, maps, or other information collected or generated in furtherance of the work. In the event the termination only requires termination on part of the work, the necessary cessation shall only apply to the part of the work terminated.

19. CAPTIONS OR HEADNOTES

The captions or headnotes in this Agreement are intended for convenience and reference only and in no way define, limit or describe the scope of intent thereof, or of this Agreement.

20. ASSIGNABILITY

CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in same, by assignment or novation, without the prior written consent of TRIBE. This provision shall extend to and include any assignment of monies due or to become due to CONTRACTOR under this Agreement. Any such assignment shall be void without TRIBE'S written consent.

21. VERBAL AGREEMENTS

This Agreement with all appendices represents the entire agreement between TRIBE and CONTRACTOR. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreements not incorporated herein nor any other alteration or variation of the terms hereof, unless made in writing between the parties hereto, shall be binding.

22. EFFECT OF WAIVER AND ENFORCEMENT

The waiver of either party hereto of any breach, condition or provision of this Agreement by the other party shall be limited to the particular instance, and shall not operate or be deemed to waive any further breach or breaches of said condition or provision. The failure of either party to insist in any one instance, or more, upon the performance of any of the conditions or provisions of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as waiving any such condition, provision, right or privilege, but the same shall continue and remain in full force and effect. Any provision, to the extent it is found to be unlawful or unenforceable, shall be ineffective without affecting any other provision of the Agreement, so that the Agreement will be deemed to be valid, binding and enforceable in accordance with its terms.

23. **GOVERNING LAW**

The CONTRACTOR hereby consents to the jurisdiction of the White Mountain Apache Tribal Court as the exclusive venue and forum for any claims by CONTRACTOR arising from this Agreement. This Agreement shall be governed and construed in accordance with the laws and regulations of the White Mountain Apache Tribe. Nothing within this Agreement shall waive the sovereign immunity of the White Mountain Apache Tribe

Done on this _____ day of _____, 2008 in Whiteriver, Arizona on the Fort Apache Indian Reservation.

WHITE MOUNTAIN APACHE TRIBE

By _____
Ronnie Lupe, Tribal Chairman

Date:

By: _____

Tom Moody

Date:

Attachment A - SCOPE OF WORK

***** CONFIDENTIAL – Proprietary Information *****

Inventory, Assessment, & Monitoring of Natural Channels in the Arid Southwest Training

Project Manager (CONTRACTOR): Tom Moody

Funding Source: Watershed Program's CWA Water Pollution Control Grant FY2007-2008 (using funds allocated for "Contractual – Educators utilized on watershed assessments, i.e. Community Elders/Educators from other various land & water disciplines).

Tribal Contact and Liaison: Jo Ann Sedillo, Watershed Program Manager

Overview and Purpose:

The Watershed and Hydrology & Water Resources Programs continues their ongoing efforts to classify and assess streams (and other waterbodies) on the Fort Apache Indian Reservation. This monitoring and data collection is vital in order to archive watershed conditions, restoration before & after statuses, nonpoint source impacts, wetland/riparian delineation, and other assessments related to human-related impacts or acts-of-nature.

The Tribe and it's resources have unfortunately been impacted by many devastating human and natural disasters, i.e. Rodeo-Chediski Fire, flooding, eradication of natural vegetation. Impacts such as these have caused gully formations, loss of vegetation, unstable streambanks and channels, heavy sediment loads in streams, loss of farmlands, and overflow on roads and bridges. The goal of this project is to ensure that the WMAT technical staff are trained and approach the classification and assessments with the same methodology.

Background Information:

The Watershed Program, including other natural resource programs, have been initiating in or are presently coordinating with other Tribal or other governmental departments, in classifying, assessing, and/or implementing restoration projects on the Fort Apache Indian Reservation. The data collection and narrative descriptions and figures/tables generated from the data are vital. This information is utilized in assessing a watershed's condition (water quality, riparian vigor, human-related impacts) and plays a key role in generating reports when applying for grants, reporting to the Tribal Council, the general public, and for the Watershed, Hydrology & Water Resources Program, and other involved program's archives or databases.

Assessments or restoration projects that have taken place on the FAIR:

- Gooseberry Phase I & II
- Lofer Cienega I, II, & III
- Soldier Springs
- Maverick Cienega
- Ess Spring Cienega
- White Springs
- Cibecue Creek (abv the bridge)
- Martinez Ranch
- Butterfly Cienega

- Deep Cienega
- Upper Pacheta Cienega
- Tonto Creek
- Hughey Creek
- Helen Josay's cornfield
- Cedar Creek
- Rose Thompson's cornfield
- Z-19
- Swamp Springs
- Pacheta Creek (blw Y40 Rd)
- Ord Creek
- George Basin
- Limestone Canyon
- I-19
- Salt Creek Cemetery
- other spring projects
- Hurricane Creek
- Paddy Cienega
- Becker Creek (@ Sunrise Park Resort)
- Blue Springs
- Turkey Springs
- R-14
- Stockman's Diversion
- other various site reports

Project Term:

The project term will be a minimum of one (1) week, with possibility for extension if both parties agree to the terms of extension.

Deliverables:

The following deliverables represent minimum expectations for work produced by the CONTRACTOR during the one-week term of the project:

- 1) Introduce the WMAT technical staff to the use of the David Rosgen's Natural Channel Classification System; specific examples of channel types in Arizona, Utah, and New Mexico; and stream assessment and methodologies.
- 2) Field techniques for channel classification surveys; how to recognize and measure channel stability parameters; field techniques for channel assessments; methods for assessing adequate sediment transport in stream systems; and objectives and field techniques for monitoring.
- 3) Provide additional training on analyzing and evaluating monitoring field data (data entry & planning of database design).
- 4) Provide binders with lecture material (power point presentations), field sheets, CD on field templates and technical references, and use of equipment in field surveys.

Project Location and Hours:

The TRIBE shall provide the CONTRACTOR with work space and any additional equipment (related to the training) necessary for completion of the above-stated deliverables. The CONTRACTOR agrees to conduct work on a 40-hour weekly work schedule with detailed scheduling to be agreed upon by both parties upon initiation of the project.

Attachment B - Payment for Services

TRIBE agrees to pay the CONTRACTOR as follows:

1. for completed services rendered for a one-week term, with a total contract payment not to exceed **\$12,000.00**, for completion of the project with associated deliverables as specified in Attachment A (Scope of Work) in this Agreement.

Attachment C - Confidentiality Policy

DEFINITIONS:

- "Tribal Information" is defined as any verbal, visual, pictorial, graphic, electronically-stored, printed, recorded, or written material acquired from the Tribe or other person or entity or obtained in any other way including, but not limited to, reports, summaries, data, maps, photographs, correspondence, phone call records, audio and video recordings, and any other form of information pertaining to the Tribe or its property, assets, or interests, including information in the custody of the Trustee United States.
- Tribal Information may contain proprietary, privileged, commercial, confidential, religious, cultural, and ceremonial information that the TRIBE would not customarily release to the general public. Such information may include, but is not limited to:
 - sensitive and/or federally listed (eg, threatened, endangered, or candidate) species that may exist on the Fort Apache Indian Reservation [Reservation].
 - specific habitat or ecosystem conditions on the Reservation.
 - quality of Reservation water resources, including groundwater.
 - quantity and inventory of Reservation water resources, including groundwater, stream flow data, rating curves, water levels, number and locations of gaging stations, methods and frequency of data collection, or any other information pertinent to quantification of water resources on the Reservation.
 - commercial activities on the Reservation.
 - natural resource management practices or plans on the Reservation.
 - location and nature of sites of cultural or religious significance.

GENERAL RULE:

- Any and all Tribal Information shall remain the property of the Tribe, regardless of location or custody. All Tribal Information shall remain with the Tribe and may not be removed from the Fort Apache Indian Reservation, except as authorized in writing by the Tribe.

STATEMENT OF CONSENT:

As a consequence of my status as CONTRACTOR to the TRIBE, I will have access to information not generally known to the general public. I will not, without authorization from the TRIBE, during or after the term of this Agreement, directly or indirectly use, disseminate, or disclose to any person, unauthorized governmental body, agency or employee, or any firm or other business entity for any purpose whatsoever, any Tribal Information as defined herein.

CONTRACTOR – Tom Moody

Date