

FORM APPROVED COUNTY COUNSEL 7/14/16  
 BY: GREGORY P. PRIAMOS DATE



**SUBMITTAL TO THE BOARD OF DIRECTORS  
 REGIONAL PARK AND OPEN SPACE DISTRICT  
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

246



**FROM:** Regional Park and Open-Space District

**SUBMITTAL DATE:**  
 July 14, 2016

**SUBJECT:** Santa Ana River Trail: Corona, Norco, Eastvale Segment and State Route 71 (Prado Dam to Hidden Valley Wildlife Area - Third Amendment to Professional Service Agreement for Environmental Services with FCS International Inc. DBA Michael Brandman Associates; District 2; [\$146,136]; Coastal Conservancy Grant- 33110]

**RECOMMENDED MOTION:** That the Board of Directors:

1. Approve the Third Amendment to the Professional Service Agreement for Environmental Services between the Riverside County Regional Park and Open-Space District and FCS International Inc. (FCS) DBA Michael Brandman Associates; and
2. Authorize the Chairman of the District's Board of Directors to execute the Third Amendment; and
3. Direct the Clerk of the Board to return 3 copies of the executed agreement to the District .

Departmental Concurrence

**BACKGROUND:**  
Summary  
 (Continued on page 2)

Keith Herron

*Keith Herron*

For: Scott Bangle  
 General Manager

2017-011D

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 146,136	\$ 0	\$ 146,136	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** Coastal Conservancy Grant – Fund 33110  
 Budget Adjustment: No  
 For Fiscal Year: 2016-17

**C.E.O. RECOMMENDATION:** APPROVE  
 BY: *Alex Gann*  
 Alex Gann

County Executive Office Signature

**MINUTES OF THE BOARD OF DIRECTORS**

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: 2/9/16 M.O. #13-1D | District: 2 | Agenda Number:

**13-1D**

**SUBMITTAL TO THE BOARD OF DIRECTORS, REGIONAL PARK AND OPEN SPACE DISTRICT,  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.**

**FORM 11:** Santa Ana River Trail: Corona, Norco, Eastvale Segment and State Route 71 (Prado Dam to Hidden Valley Wildlife Area) - Third Amendment to Professional Service Agreement for Environmental Services with FCS International Inc. DBA Michael Brandman Associates; District 2; [\$146,136; Coastal Conservancy Grant- 33110]

**DATE:** July 14, 2016

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary (continued)**

The Santa Ana River Trail Project has involved multiple agencies from Riverside, Orange and San Bernardino counties, federal and state governmental resource agencies, cities and local special interest groups. During the course of the final environmental analysis and document reviews both the federal and state resource agencies requested additional and or expanded environmental studies with agency consultation prior to issuing final approvals. The description of the required studies and consultations are summarized in the Third Amendment and supported in detail by EXHIBIT "A" to the amendment. Both are attached to this document.

The Third Amendment has been reviewed and approved as to form by County Counsel.

**Impact on Citizens and Businesses**

When complete, the Santa Ana River Trail will provide the Citizens of Riverside County a 36 mile recreational trail within the Santa Ana River Corridor. It will offer connections into both the Counties of Orange and San Bernardino. Providing trail users the opportunity to use and explore approximately 110 miles of trail. In addition, the completed trail is designed as an alternate transportation route between the three counties and may possibly reduce greenhouse gas emissions.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

This project is fully funded by a grant from the California State Coastal Conservancy. The original contract for FCS was \$89,730. It was amended January 5, 2016 to add \$ 87,000 to the contract for an adjusted total amount of \$176,730. This amendment will add an addition \$146,136 for a new adjusted total agreement cost of \$322,866.

**Contract History and Price Reasonableness**

The District and the Consultant have negotiated the service agreement increase shown in Attachment 1 as supporting documentation. The fee adjustment is within industry standard for a project of this scale and complexity.

**Attachments:**

Third Amendment to the Professional Service Agreement For Environmental Services with FCS  
Exhibit A

**THIRD AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT FOR  
ENVIRONMENTAL SERVICES**

**By and Between**

**THE RIVERSIDE COUNTY REGIONAL PARK AND OPEN-SPACE DISTRICT**

**And**

**FCS INTERNATIONAL INC, DBA MICHAEL BRANDMAN ASSOCIATES**

THIS **THIRD AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT FOR ENVIRONMENTAL SERVICES** ("Third Amendment"), dated as of \_\_\_\_\_, is entered into by and between THE RIVERSIDE COUNTY REGIONAL PARK AND OPEN-SPACE DISTRICT, a special district created pursuant to the California Public Resources Code Div.5, Ch.3, Art.3, ("District"), and FCS International, Inc, DBA Michael Brandman Associates ("Consultant"), a California corporation, sometimes collectively referred to as the "Parties".

**RECITALS**

- A. The DISTRICT and FCS International entered into that certain **Professional Service Agreement For Environmental Services**, dated December 4, 2012 (the "Original Agreement") pursuant to which District has retained the services of Consultant to provide environmental services and documentation for the benefit of the Riverside County Regional Park and Open-Space District Santa Ana River Trail Project, more particularly described in the Original Agreement.
- B. That certain First Amendment to the Original Agreement dated December 15, 2015 was entered into between the CONSULTANT and the DISTRICT, as the beneficiary and successor to the Original Agreement, where by the term for the period of performance was extended and notice requirements were added for the tracking the term period of the Original Agreement.
- C. That certain Second Amendment to the Original Agreement dated February 9, 2016 was entered into between the CONSULTANT and DISTRICT, as the beneficiary and successor to the Original Agreement, where by general environmental services, the scope of work and total compensation were amended.
- D. During the public review period for the project documents, the federal and state resource agencies required additional environmental, cultural resource and agency consultations prior to project approval.
- E. The DISTRICT has concurred with the agencies request, determining the needed for expanded and more detailed environmental analysis, to allow for the development of the overall Santa Ana River Trail Project: Prado-Norco-Eastvale Segment.
- F. The Original Agreement together with the First, Second Amendments and this Third Amendment are collectively referred to herein as the "Agreement"

G. The District and the Consultant now desire to amend the Original Agreement to amend the scope of work and increase the total compensation amount for the Agreement.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. DESCRIPTION OF SERVICES. Section 1 the Agreement is hereby amended by the following:

The Consultant shall provide all services to produce the surveys and reports required by the United States Fish and Wildlife Service focusing on the following tasks to obtain project approval:

- Burrowing owl habitat and focused surveys and report
- Endangered Species Act Section 7 consultation services
- Endangered Species Act Section 7 species specific surveys
- Least Bell's vireo expanded habitat and focused surveys and report for DBESP
- Pre-Construction nesting and bird surveys and report
- Expanded cultural resource records search at the EIC, Riverside, County, California
- Expanded Area Paleontological Database and Regional Localities Search
- Representing the Army Corp of Engineers on Section 106 Native American Consultations
- Preparation of the APE Definitions letter for the State office of Historic Preservation
- Additional biweekly meeting services and project management due to expanded project work.

The detailed work description for the additional service and the related supporting cost per task have been described in details in **EXHIBIT "A"** and by reference incorporated herein.

2. COMPENSATION. Section 3 of the Agreement is hereby amended by the following:

DISTRICT shall pay the CONSULTANT for the Additional Services an amount not to exceed One Hundred Forty-Six Thousand, One Hundred Thirty-Six Dollars (\$146,136) and in accordance with the terms of **EXHIBIT "A"**. Maximum payments by the DISTRICT to CONSULTANT shall not exceed \$146,136 including all expenses, for the Additional Services. Upon approval of this Third Amendment, the total compensation amount for all services shall not exceed a sum total of Three Hundred Twenty-Two Thousand, Eight Hundred, Sixty-Six Dollars (\$322,866).

3. CAPITALIZED TERMS. Third Amendment to Prevail. Unless defined herein or the context requires otherwise, all capitalized terms herein shall have the meaning defined in

the Agreement, as heretofore amended. The provisions of this Third Amendment shall prevail over any inconsistency or conflicting provisions of the Agreement, as heretofore amended, and shall supplement the remaining provisions thereof.

4. MISCELLANEOUS. Except as amended or modified herein, all the terms of the Agreement shall remain in full force and effect and shall apply with the same force and effect. Subject to the provisions of the Agreement as to assignment, conditions and provisions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto. If any provisions of this Amendment or the Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of the Agreement and all such other provisions shall remain in full force and effect. The language in all parts of the Agreement shall be construed according to its normal and usual meaning and not strictly for or against either District or Consultant. Neither this Amendment, nor the Original Agreement, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Consultant.
5. EFFECTIVE DATE. This Third Amendment to the Agreement shall not be binding or consummated until its approval by the District Board of Directors and fully executed by the Parties.

[Signature Provisions on Following Page]

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the dates written below.

**DISTRICT**

RIVERSIDE COUNTY REGIONAL  
PARK AND OPEN-SPACE DISTRICT

**CONSULTANT**

FCS International, Inc  
DBA Michael Brandman Associates  
220 Commerce Suite 220  
Irvine, CA 92602

By: \_\_\_\_\_  
Kevin Jefferies  
Chairman, Board of Directors

By: \_\_\_\_\_  
Frank Coyle  
Director

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST:**

Kecia Harper-Ihem  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

(Seal)

**APPROVED AS TO FORM:**

Gregory P. Priamos  
County Counsel

By: Synthia M. Gunzel  
Synthia M. Gunzel  
Deputy County Counsel



May 18, 2016

Marc Brewer  
Riverside County Regional Park and Open Space District  
4600 Crestmore Road  
Riverside, CA 92509

**Subject: 3489.0006 Santa Ana River Trail Environmental Services Budget Augment**

Dear Mr. Brewer:

Thank you for providing FirstCarbon Solutions (FCS) the opportunity to provide additional environmental services for the Santa Ana River Trail (SART) project. This augment addresses the scope and budget needed to complete the environmental program, in particular to produce surveys and reports that address United States Fish and Wildlife Service comments on the project, focusing on the following tasks:

- Burrowing owl habitat and focused surveys and report
- Endangered Species Act Section 7 consultation services
- Endangered Species Act Section 7 species surveys
- Least Bell's vireo habitat and focused surveys and report for DBESP
- Pre-construction nesting bird surveys and report
- Expanded cultural resources records search at the Eastern Information Center, Riverside County, California
- Expanded Paleontological Database and Regional Localities Search
- Assistance with Section 106 Native American Consultation on Behalf of USACE
- Preparation of APE Definitions Letter for SHPO on Behalf of USACE
- Ongoing bi-weekly project meetings and project management

A detailed scope of work and related fee proposal are included herein.

Sincerely,

Frank Coyle, Senior Project Manager  
FirstCarbon Solutions  
250 Commerce, Suite 250  
Irvine, CA 92602

APPROVED:

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## SECTION 1: PROJECT BACKGROUND

FirstCarbon Solutions was contracted by the County to conduct specific biological surveys and regulatory permitting for the SART project consistent with the trail alignment evaluated in the approved United States Army Corps of Engineers Environmental Assessment (EA) in 2010 and 2012. Biological surveys were also conducted as part of the Determination of Biological Equivalent or Superior Preservation (DBESP) Analysis as required under the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) for impacts to Riparian/Riverine Habitat from proposed construction of approximately 11 miles of the SART located in the Cities of Corona, Eastvale, unincorporated Riverside County, and the United States Army Corps of Engineers (USACE) Prado Basin in Riverside County, California.

Since the completion of the initial regulatory documents and biological surveys, it has been determined through the agency review and comment process for these regulatory documents that additional surveys and regulatory permitting are necessary for the environmental compliance portion of the SART project. These determinations were based on feedback on the regulatory documents by the USACE and the United States Fish and Wildlife Service (USFWS), as well as collaborative agreement between the project team's participating entities. The impetus for these additional surveys and regulatory permitting is described further within their respective tasks in Section 2, Scope Amendment.

## SECTION 2: SCOPE AMENDMENT

### Task 1: Burrowing Owl Habitat Focused Surveys and Report

Suitable habitat for burrowing owl (*Athene cunicularia*) has been documented within the project site, and, therefore, focused surveys are warranted under the MSHCP. Focused burrowing owl surveys will be conducted by a qualified biologist familiar with the identification and behaviors of the species to determine the presence/absence of the species. Surveys will be performed according to standard guidelines compliant with the MSHCP (County of Riverside 2006) to determine the presence of potential habitat and the presence/absence of the burrowing owl within identified areas of potential habitat in Reaches VI, VII, VIII, and IX of the project site. Habitat and focused surveys for burrowing owl were previously conducted in Reaches II, III, and IV of the project site. Potential habitat within these reaches, and a 500-foot buffer including any natural burrows, will be surveyed according to protocol. Following the results of the burrow survey, focused surveys will be conducted at each area determined to be suitable habitat to detect the presence/absence of burrowing owl within the project site.

If no suitable burrows are located during the habitat survey and there is no potential for burrowing owls to occur on-site, only the habitat survey will be conducted. If suitable burrows and appropriate habitat occur on-site, a total of four surveys for each occurrence will be required. The initial burrowing owl habitat survey will be conducted concurrently with any focused burrow survey during the breeding season (March 1 through August 31). Only areas identified in the initial habitat survey as having suitable burrows and associated foraging habitat for owls will undergo focused surveys. The location of all





suitable burrowing owl habitats, suitable owl burrows, including suitable manmade structures that could support owls, burrowing owl sign, and any owls observed will be recorded and mapped, with GPS coordinates. Following the surveys, a report providing details on the locations of any species present, potential impacts to either individuals or habitat, and recommendations for either avoidance or a reduction of impacts will be prepared and submitted for review.

**Task 1—Deliverables**

Draft survey report within three (3) weeks of completing the surveys. Based on one set of review comments from the client, a final report will be prepared. Final report within one (1) week of receiving comments from the Client on the draft report.

**Task 2: Endangered Species Act Section 7 Consultation**

In response to USFWS comment with regard to Endangered Species Act (ESA) Section 7 Consultation, FCS reached out to the USACE with regard to the SART trail alignment. It was determined that because the majority of the SART alignment is on USACE property in the vicinity of the Prado Basin, the project will be required to undergo Section 7 consultation (Katie Parks, USACE, personal communication, April 2016; Carvel Bass, USACE, personal communication, May 2016).

ECORP will assist FirstCarbon Solutions in biological surveys and documentation in support of the ESA Section 7 consultation process. The federal action is limited to permission to construct, operate and maintain the proposed SART in Reaches I–IX (from north to south) of the SART’s Corona-Norco-Eastvale Segment on lands owned by the USACE in the general area that includes the Prado Basin. The federal action would terminate at Reach IX—the northern boundary of federal fee ownership. Separate and additional evaluation may be required by Orange County for portions of the trail crossing lands belonging to Orange County, the non-federal sponsor for the Prado Dam structures. For those areas outside of the United States ownership, compliance with the MSHCP has been completed for the project. Biological resources reports completed to date in support of this project are summarized in Table 1.

**Table 1 List of Previous Reports Prepared**

Report Title	Date
Revised Determination of Biological Equivalent or Superior Preservation (DBESP) Analysis	October 2015
Habitat Assessment and MSHCP Consistency Analysis	March 2011
Burrowing Owl Focused Survey Report	September 2010
Sensitive Plant Focused Survey Report	September 2010
Least Bell’s Vireo Focused Survey Report	September 2010



The proposed SART alignment crosses portions of property owned and operated by the USACE. The USACE is not a participating entity in the MSHCP; thus, any project impacts that will likely affect federally listed species or their designated critical habitat on USACE property will require consultation under Section 7 of the Endangered Species Act with the USACE acting as the lead agency.

The proposed SART alignment crosses federal proposed and final designated Critical Habitat for four different species protected under the federal Endangered Species Act (USFWS 1973). Based on the current SART alignment, species and portions of the critical habitat listed in Table 2 may be directly or indirectly adversely modified or destroyed as a result of the proposed project.

**Table 2: Federally Listed Species with Critical Habitat in the SART Project Area**

Species	Status	Critical Habitat
least Bell's vireo ( <i>Vireo bellii pusillus</i> )	Federally Endangered	Final
Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> )	Federally Endangered	Final
yellow-billed cuckoo ( <i>Coccyzus americanus</i> )	Federally Threatened	Proposed
Santa Ana sucker ( <i>Catostomus santaanae</i> )	Federally Threatened	Final

Based on the current SART alignment, portions of the critical habitat listed in Table 2 will be directly or indirectly adversely modified or destroyed as a result of the proposed project.

Table 3 identifies other species of plants and wildlife protected under the Endangered Species Act, without critical habitat in the project area, that have the potential to be impacted from the proposed project, based on an IPaC Trust Resources Report for the proposed SART alignment (USFWS 2016). Based on the aforementioned reports, these species are not expected to be impacted by the project; however, confirmation of this will be included as part of the consultation process.

**Table 3: Federally Listed Species without Critical Habitat in the SART Project Area**

Species	Status
Coastal California gnatcatcher <i>Polioptila californica californica</i>	Federally Threatened
San Diego ambrosia <i>Ambrosia pumila</i>	Federally Endangered
Santa Ana River woolly-star <i>Eriastrum densifolium</i> ssp. <i>sanctorum</i>	Federally Endangered



**Table 3 (cont.): Federally Listed Species without Critical Habitat in the SART Project Area**

Species	Status
thread-leaved brodiaea <i>Brodiaea filifolia</i>	Federally Threatened
Delhi sands flower-loving fly <i>Rhaphiomidas terminatus abdominalis</i>	Federally Endangered
Stephens' kangaroo rat <i>Dipodomys stephensi</i> (incl. <i>D. cascus</i> )	Federally Endangered

The federally listed species and their critical habitat listed in Tables 2 and 3 have the potential to be directly or indirectly impacted by the SART project. In order to initiate formal consultation with the USFWS, an Initiation Package for Endangered Species Act Consultation will need to be prepared under the direction of the USACE. The Initiation Package will identify which listed species or critical habitat may be affected by the proposed SART project action. The Initiation Package will contain sufficient detail to determine to what extent the proposed action may affect any of the threatened, endangered, proposed, or sensitive species and designated or proposed critical habitats.

Preparation of a Biological Assessment under the direction of the USACE and USFWS will be required to determine whether the proposed action is likely to: adversely affect listed species or designated critical habitat; jeopardize the continued existence of species that are proposed for listing; or adversely modify proposed critical habitat. The Biological Assessment will need to determine at least the following potential impacts to federally listed species and their critical habitats: direct impacts to critical habitat, zone of effect from construction activity and noise generated by different construction methods and equipment, post-construction zone of effect from pedestrian, canine and equestrian trail and off-trail utilization; potential for increase in brown-headed cowbird (*Molothrus ater*); nest parasitization of federally listed avian species with special emphasis on the least Bell's vireo; and potential impacts to USACE mitigation sites relative to the SART alignment.

To determine the potential for impacts to federally listed species, previous data will be reviewed and additional biological surveys may be required to determine baseline conditions in the proposed SART project area. The study area for the biological surveys will be determined by the type of species being surveyed relative to the action proposed to occur in a given area. Therefore, as defined by the USFWS, the action area is the area based on the given action and the sensitivity of the species being surveyed. For example, the minimum survey area for nesting least Bell's vireo would be no less than one-quarter mile (1,320 feet) from either side of the proposed SART alignment.

Once completed, the Biological Assessment will be submitted to the USFWS for their review. The USFWS will respond to the Biological Assessment with a Biological Opinion stating whether or not the proposed SART project action is likely to jeopardize the continued existence of listed species, or result in the



destruction or adverse modification of designated critical habitat; a summary of the information on which the opinion is based; and a detailed discussion of the effects of the action on listed species or designated critical habitat. The USFWS through the Biological Opinion will make a jeopardy determination and will offer alternative actions that will avoid jeopardy. If the USFWS determines that the proposed SART action may affect a listed species but will not jeopardize its continued existence, an incidental take statement may be issued.

## **Task 2: Deliverables and Assumptions**

- Cost and schedule estimates are based on our best judgment of the requirements known at the time of the proposal and can be influenced favorably or adversely by the Client's needs and other circumstances. ECORP Consulting, Inc., will endeavor to perform the services and accomplish the objectives within the estimated costs and schedule. However, if the scope of work or schedule changes, ECORP Consulting, Inc., reserves the right to revise costs accordingly.
- ECORP will invoice this task on a time-and-materials basis because the level of effort required to complete this task may vary from the estimated number of hours.
- It is assumed that the Client will provide project plans in digital GIS or CAD format. The plans will be used in preparing the necessary maps and figures.
- It is assumed that ECORP Consulting, Inc. can use and rely on the data and information contained in the project related documents provided by the Client.
- ECORP's biological resources manager will prepare for and attend meetings with the USFWS (Carlsbad) and USACE (Los Angeles or at the project site). Meeting minutes will be prepared and submitted to the Client following each meeting. ECORP will invoice this task on a time-and-materials basis because the level of effort required to complete this task may vary from the estimated number of hours. ECORP anticipates up to eight (8) meetings at two (2) hours each in length and up to two (2) hours for travel time for both the project manager and principal biologist to attend. These hours may also be used for participation in the project's ongoing bi-monthly meetings by ECORP staff, as needed.
- A Draft Biological Assessment will be prepared for client review. The possibility of the USFWS drafting the Biological Assessment still exists, and so this task will not be billed if this is determined through coordination with the agency to be the case.
- It is assumed that ECORP will respond to two rounds of comments from the Client and USFWS. Responses to any additional rounds of comments will be negotiated with the Client on a time and materials basis using the ECORP billing rates provided in this proposal.
- Based on one set of review comments from the Client, a final report will be prepared. The Final BA will be provided within four (4) weeks of receiving comments from the Client on the draft report.

- The cost estimate is based on providing the draft reports in electronic pdf format and the final report as three (3) hard copies plus electronic versions in pdf format.
- Change orders will be issued and signed by the Client and ECORP Consulting, Inc., before starting additional work not provided for in the original proposal. Any additional out-of-scope work will not commence until the change order is signed by the appropriate Client representative.

Once completed, the Biological Assessment will be submitted to the USFWS for review. The USFWS will respond to the Biological Assessment with a Biological Opinion stating whether or not the proposed SART project action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; a summary of the information on which the opinion is based; and a detailed discussion of the effects of the action on listed species or designated critical habitat. The Biological Opinion will make a jeopardy determination and will offer alternative actions that will avoid jeopardy. If the USFWS determines that the proposed SART action may affect a listed species but will not jeopardize its continued existence, an incidental take statement may be issued.

### **Task 3: Riparian Bird Focused Surveys for ESA Section 7 Consultation**

#### **Least Bell's Vireo Surveys**

Focused least Bell's vireo surveys will be conducted by a qualified biologist familiar with the identification, vocalizations, and behaviors of the species to determine the presence/absence of the species. Surveys will be conducted in accordance with protocol guidelines (USFWS 2001), which requires eight surveys be conducted at least 10 days apart during the period between April 10 and July 31. The surveys will be conducted between dawn and 11 a.m. when weather conditions are favorable.

#### **Southwestern Willow Flycatcher**

Surveys for southwestern willow flycatcher will be conducted by a 10(a)(1)(A) permitted southwestern willow flycatcher biologist in all suitable habitat according to the protocol developed for the species by U.S. Geological Survey (USGS), USFWS, and the Bureau of Reclamation (Sogge, Ahlers, & Sferra 2010). Upon receiving notice to proceed, the biologist will provide a 15-day pre-survey notification to the USFWS, as required by the 10(a)(1)(A) permit. The 2010 protocol requires that a minimum of five surveys are conducted at least 5 days apart during three survey periods between May 15 and July 17. At least one survey must be conducted during the first timeframe (May 15–31), and two surveys must be conducted during both the second and third timeframes (June 1–24 and June 24–July 17). Surveys will be conducted using a digital recording of willow flycatcher vocalizations, and by scanning all potential habitat with binoculars for the presence of willow flycatchers while listening for any vocal responses to the recording. Surveys for southwestern willow flycatcher will be conducted concurrently with surveys for least Bell's vireo because both species have similar habitat requirements.

As a cost-saving measure, five of the least Bell's vireo surveys will be conducted concurrently with the five protocol southwestern willow flycatcher surveys. If the least Bell's vireo and southwestern willow flycatcher surveys were conducted independently of one another, there would be a total of 13 separate visits to the site. By combining five of the vireo surveys with the flycatcher surveys, the total number of site visits is reduced to eight.

### **Western Yellow-billed Cuckoo**

Surveys for Western yellow-billed cuckoo will be conducted by a 10(a)(1)(A) permitted western yellow-billed cuckoo biologist in accordance with the USFWS protocol (Halterman, Johnson, Holmes, & Laymon 2015) developed for the species. Upon receiving notice to proceed, the biologist will provide a 15-day pre-survey notification to the USFWS, as required by the 10(a)(1)(A) permit. The 2015 protocol requires a minimum of 4 surveys be conducted at least 12 days, but no more than 15 days, apart during three survey periods between June 15 and August 15. At least one survey must be conducted between June 15 and July 1 (Period 1), at least two surveys between July 1 and 31 (Period 2), and at least one survey between July 31 and August 15. Additional surveys may be warranted to confirm breeding status of any individuals present. The surveys are conducted between dawn and 11:00 a.m. using digital recordings of yellow-billed cuckoo vocalizations to locate individuals.

Following the completion of the surveys, a focused least Bell's vireo, southwestern willow flycatcher, and western yellow-billed cuckoo survey report will be prepared. The report will include the names of all surveyors, dates of surveys, detailed information for all least Bell's vireo and southwestern willow flycatchers observed, and the name and location of any other sensitive wildlife or plants observed during the surveys. Photographs, GPS data, data sheets, and a general description of the existing on-site conditions will also be provided. ECORP will provide a draft version of the report to the Client via email, for one round of comments. After incorporation of one round of comments from the Client, ECORP will prepare the final version of the report. A total of two electronic copies (one PDF version and one version in Microsoft Word) will be submitted to the Client. Additionally, a copy of the survey report will be submitted to the USFWS to maintain compliance with permit requirements and ECORP will provide notification to CNDDDB for special-status species.

The survey schedule below is based on a start date of May 23, 2016; if initiated any later, the surveys will need to be compressed to less than 10 days apart for least Bell's vireo, with the permission of the USFWS (please see Table 4). The areas to be surveyed are only those within Reach IX of the project area. The determination to survey only in Reach IX is due to the absence of Southern willow scrub within Reaches I through XIII, and because of ongoing survey efforts for these species in Reaches I through XIII by Orange County Water District (as indicated in previous report).

### **Task 3—Deliverables**

Draft survey report within three (3) weeks of completing the surveys. Based on one set of review comments from the client, a final report will be prepared. Final report within one (1) week of receiving comments from the client on the draft report.

**Table 4 Survey Schedule for Least Bell’s Vireo (LBVI)\*, Southwestern Willow Flycatcher (SWWF), and Yellow-billed Cuckoo (YBCU)**

Date	Species	Survey Number
May 23	LBVI+SWWF	1
June 2	LBVI	2
June 10	LBVI+SWWF	3/2
June 20	LBVI+SWWF	4/3
June 30	LBVI+SWWF	5/4
July 8	LBVI+SWWF	6/5
July 18	LBVI	7
July 28	LBVI	8
June 21	YBCU	1
July 6	YBCU	2
July 20	YBCU	3
August 3	YBCU	4

Note:  
\* Schedule maintains 10-day window except two instances of 8-day separation (between June 2 and June 10; between June 30 and July 8), no weekends (eight visits).

#### Task 4: Least Bell’s Vireo Habitat and Focused Surveys and Report for DBESP Response to Comment

A qualified FCS biologist will perform approved United States Fish and Wildlife Service (USFWS) protocol surveys to determine presence/absence of the Federally Endangered least Bell’s vireo (*Vireo bellii pusillus*) within suitable habitat of the project site per request by the USFWS in response to the agency’s review of the DBESP prepared for the project. The areas to be surveyed are as follows:

- The USFWS has requested that the surveys for least Bell’s vireo be extended to include Reach IX using the most recent USFWS protocol (the surveys in Reach IX will be conducted as part of the least Bell’s vireo surveys for ESA Section 7 consultation, Task 3).
- The “no impact” habitat areas within Reaches V, VI, VII, and VIII should be resurveyed as was determined by the project team in March 2016 (fee for these requested surveys only under this task).
- The alternative trail alignments (developed by the project team in March 2016) in Reach IX should be surveyed (included as the least Bell’s vireo surveys for ESA Section 7 consultation, Task 3).

While previous least Bell's vireo surveys have identified locations with the species present in the past, these additional surveys prior to final design could result in a reduction of impacts to the species and in less mitigation associated with all of the permits necessary for construction. The goal of these surveys is to avoid, whenever possible, bifurcating an individual least Bell's vireo territory and thus reduce impacts to this threatened species.

In accordance with USFWS survey protocol, surveys will be conducted between April 1 to July 31, with a minimum of eight site visits will be conducted at least 10 days apart, as previously described.

#### **Task 4—Deliverables**

Draft survey report within three (3) weeks of completing the surveys. Based on one set of review comments from the client, a final report will be prepared. Final report within one (1) week of receiving comments from the Client on the draft report.

#### **Task 5: Pre-Construction Nesting Bird Surveys and Report**

The study area contains suitable nesting habitat for a number of common and sensitive, tree- and ground-nesting avian species under the protection of the Migratory Bird Treaty Act and or California Fish and Game Code Sections 3800, 3513, and 3503.5. The southern cottonwood willow riparian forests and coastal sage scrub communities within the study area provide suitable habitat for sensitive avian species including, least Bell's vireo and coastal California gnatcatcher. The eucalyptus/ornamental woodlands, and bridges and overpasses also provide suitable nesting and foraging habitat for a number of common migratory species. These include the following species that were observed during previous habitat assessments for the project: California towhee, Bewick's wren, white-throated swift, and Nuttall's woodpecker. Therefore, if installation of the proposed project occurs during the avian nesting season (February 15 thru August 31), the project may result in incidental "take" of nesting birds located in the immediate vicinity of the project study area, in areas containing suitable nesting vegetation.

FCS biologists will conduct pre-construction surveys 30 days prior to any construction activities on a time-and-materials basis. Based on other mitigation measure restrictions related to construction restrictions during nesting bird season, these surveys will generally be conducted outside of the nesting bird season. The surveys will focus on identifying any biological issues such as wildlife within the proposed alignment, sensitive vegetation within the proposed right-of-way, or any changes in conditions from all of the previous surveys. In addition, should construction require that work be conducted during the nesting season, FCS biologists will conduct an additional survey during the nesting season to ensure compliance pursuant to the MSHCP, the California Fish and Game Code, and the Migratory Bird Treaty Act. If nesting birds are found and the nests are within 300 feet of the construction corridor for passerine birds or 500 feet for raptors, FCS biologists will consult with the CDFW and USFWS on appropriate avoidance measures. A plan for avoidance and or minimization of impacts will be prepared and reviewed by CDFW and USFWS seeking concurrence on the approach. Once approved work can continue and the contractor will be authorized to complete construction.



If threatened or endangered species are observed in the area, the biologist will place a no-work buffer within 500 feet of the nest (which shall be flagged or fenced) during the breeding season (March 1 through September 15) to avoid direct or indirect (noise) take of listed species and State and/or Federal threatened/endangered species. The nesting season surveys for burrowing owls should be conducted between April 15 and July 15, at the peak of the breeding season.

A total of 16 hours have been allocated to this task for the purposes of cost estimation. Additional hours may be billed on a time-and-materials basis.

### **Task 5—Deliverables**

Following the surveys, a report providing details on the locations of any species present, potential impacts to either individuals or habitat, and recommendations for either avoidance or a reduction of impacts will be prepared and submitted for review. Based on one set of review comments from the client, a final report will be prepared.

### **Task 6: Expanded Cultural Resources Records Search at the Eastern Information Center, Riverside County, California**

The original cultural resources records search conducted for this project was stewarded by Ken Lord, PhD in January of 2015 and requested only a 0.25-mile search radius beyond the trail alignment. Since that time, consultations with USACE archaeologist Danielle Storey indicated that she is generally uncomfortable with employing such a narrow search radius and would have preferred at least a 0.50-mile investigation be used. Furthermore, Ms. Storey feared that after the determination of an appropriate Area of Potential Effects (APE), the search radius would barely extend outside of the project boundaries. She indicated that she would prefer a 0.50-mile buffer to fully encompass the APE. This augment proposal includes expanding the cultural resources records search from the originally proposed 0.25-mile buffer to a 0.50-mile buffer, as that is the boundary of which Ms. Storey originally expressed approval. It is believed that since this is a robust trail project spanning over 10 miles, a search radius of a full 1-mile would contain excessive information, neither pertinent nor applicable to the project APE.

FCS will request or conduct a records search at the Eastern Information Center located at the University of California, Riverside. The records search will include the proposed project APE and a 0.50-mile search radius beyond the APE boundaries. The records search will include a review of the National Register of Historic Places, the California Register of Historical Resources, the California Inventory of Historic Resources, the California Historical Landmarks, the California Points of Historical Interest listing, the Historic Property Data File (OHP current computer list, 2014), historic maps, and other pertinent historic data.

As a records search utilizing 0.25-mile was already conducted for the project in January of 2015, every attempt will be made to limit the scope of the new records search to the additional areas not previously covered in order to minimize turn-around time and costs.

### **Task 6—Deliverables**

Results of the expanded cultural resources records search will be included in the Section 106 Phase I Cultural Resources Assessment and Paleontological Review report. Should FCS receive the results and recognize any immediate complications, the client will be notified immediately.

### **Task 7: Expanded Paleontological Database and Regional Localities Search**

Consultations with USACE determined that the standard paleontological search radius of 0.50-mile should be expanded to 1-mile in order to complement the larger cultural resources records search radius. Furthermore, it was discussed that the project's proximity to the Santa Ana River increases its potential to expose fossilized materials from naturally eroded banksides. As the originally proposed paleontological database and regional localities search has not yet been requested, increasing the search radius would not equate to redundant work, but will increase the cost slightly.

### **Task 7—Deliverables**

Results of the expanded paleontological database and regional localities search will be included in the Section 106 Phase I Cultural Resources Assessment and Paleontological Review report. Should FCS receive the results and recognize any immediate complications, the client will be notified immediately.

### **Task 8: Assistance with Section 106 Native American Consultation on Behalf of USACE**

A letter has previously been sent requesting the Native American Heritage Commission search its Sacred Lands File and provide recommendations on any Native American concerns. The results of the Sacred Lands File were negative and a list of 24 Native American representatives who may have additional information regarding cultural resources within the area was included in the response. After approval of draft Section 106 Consultation letters by Danielle Storey, FCS mailed outreach letters to each tribal representative on May 6, 2016 requesting any additional information they may have about the proposed project area. Should the letters receive no response, consultations with listed tribal entities will be attempted through subsequent phone calls and/or emails to ensure that every attempt has been made to receive input. This task is normally conducted by USACE during the review process and has the potential to greatly extend the time required to approve the report. By conducting this outreach early, and under the supervision of FCS, the USACE review process will be greatly shortened.

### **Task 8—Deliverables**

Results of the Section 106 Native American Consultation outreach efforts will be included in the Section 106 Phase I Cultural Resources Assessment and Paleontological Review report. Should FCS receive the results and recognize any immediate complications, the client will be notified immediately.

### **Task 9: Preparation of APE Definitions Letter for SHPO on Behalf of USACE**

FCS will draft a letter to SHPO, on behalf of the USACE, defining and defending the APE boundaries as decided upon through consultations with USACE. This is a requirement of the SHPO review process and



this task is normally conducted by USACE during their internal review process. However, completing this task early, and under the supervision of FCS, will greatly reduce both the USACE and SHPO review processes.

**Task 9—Deliverables**

This letter will be sent to USACE for review and approval before they, as the federal lead agency, submit it to SHPO. This letter will not be included in the Section 106 Phase I Cultural Resources Assessment and Paleontological Review report. FCS can provide a copy of this letter to the client, as needed.

**Task 10: Bi-Monthly Project Team Coordination Meetings and Project Management**

FCS staff will continue to be available for twice-monthly conference call meetings for the duration of the tasks assigned to FCS on the current project schedule. According to the current project schedule, FCS’s tasks run through December of 2016 (a total of 11 months). This task assumes participation by the Project Director and Project Manager, and occasional participation by biological, cultural resources, and other technical staff, as needed. This task assumes participation by both the Director and Project Manager for bi-monthly team meetings totaling 1.5 hours each per month, and participation by technical specialists on an as needed basis up to a total of 9 hours.

**Task 11: Ongoing Project Management**

Continued participation by the FCS Director and Project Manager will ensure effective communication with the project team and government entities throughout the remainder of the project process. The Project Manager will also ensure that the FCS elements of the project are running on time and within budget, and the documents prepared in support of the project are technically correct and legally defensible. The FCS Director and Project Manager will serve as management liaison among the project team and various government staff for communication of issues, transmittal of comments, financial management (i.e., invoices), and other Project management matters.

**Schedule and Fees**

Estimated fees for technical studies are identified below. The proposed fee is based on the scope of work described above, and includes all labor and direct costs.

Task	Firm	Fee
Task 1: Burrowing Owl Habitat Focused Surveys and Report	ECORP	\$10,328
Task 2: Endangered Species Act Section 7 Consultation	ECORP	\$58,776
Task 3: Riparian Bird Focused Surveys for ESA Section 7 Consultation	ECORP	\$33,579



Task	Firm	Fee
Task 4: Least Bell's Vireo Habitat and Focused Surveys and Report for DBESP Response to Comment	FCS	\$11,340
Task 5: Pre-Construction Nesting Bird Surveys and Report	FCS	\$3,750
Task 6: Expanded Cultural Resources Records Search at the Eastern Information Center, Riverside County, California	FCS	\$1,700
Task 7: Expanded Paleontological Database and Regional Localities Search	FCS	\$545
Task 8: Assistance with Section 106 Native American Consultation on Behalf of USACE	FCS	\$800
Task 9: Preparation of APE Definitions Letter for SHPO on Behalf of USACE	FCS	\$500
Task 10: Bi-Monthly Project Team Coordination Meetings	FCS	\$9,218
Task 11: Ongoing Project Management	FCS	\$10,600
<b>Total Professional Services</b>		<b>\$141,136</b>
<b>Direct Costs</b>		<b>\$5,000</b>
<b>TOTAL</b>		<b>\$146,136</b>

## References

County of Riverside. 2006. Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area. Riverside, CA: County of Riverside.

Endangered Species Act of 1973. Section 16 of the U.S. Code (1531-1544), as amended, Pub. L. No. Public Law 93-205, approved December 28, 1973, repealed the Endangered Species Conservation Act of December 5, 1969 (P.L. 91-135, 83 Stat. 275). The 1969 Act had amended the Endangered Species Preservation Act of October 15, 1966 (P.L. 89-669, 80 Stat. 926). (1973).

Halterman, M., M.J. Johnson, J.A. Holmes, and S.A. Laymon. 2015. A Natural History Summary and Survey Protocol for the Western Distinct Population Segment of the Yellow-billed Cuckoo: USFWS.

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