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GILA COUNTY
www.gilacountyaz.gov

PROFESSIONAL SERVICE AGREEMENT NO. 071912

FOUR MILE & PINE CREEK MATERIALS PITS ADEQ PERMITTING

THIS AGREEMENT, made and entered into this 15th day of August, 2012, by and between Gila County, a political subdivision of the State of Arizona hereinafter designated the **County**, and CL Williams Consulting, of the City of Pinetop, State of Arizona, hereinafter designated the **Consultant**.

WITNESSETH: 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 agreement's herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE 1 - SCOPE OF SERVICES: The Consultant agrees to provide Professional Consulting services for the preparation of ADEQ permits for two (2) existing materials pits located in the Pleasant Valley Ranger District of Tonto National Forest for the purposes of excavating aggregate materials for use in roadway maintenance, repair and construction for northern Gila County.

Scope of Work

See Attached "Exhibit A" by mention made a binding part of this agreement as set forth herein.

Consultant Fee's

See Attached "Exhibit A" by mention made a binding part of this agreement as set forth herein.

ARTICLE 2 - TERMINATION: The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Consultant shall stop all work as directed in the notice. If the contract is terminated, the County shall be liable only for the services rendered under this contract and accepted material received by the County before the effective date of termination.

ARTICLE 3 - INDEMNIFICATION: 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 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 4 - INSURANCE REQUIREMENTS: Consultant and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, his agents, representatives, employees or subcontractors and Consultant is free to purchase additional insurance as may be determined necessary.

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

1. **Commercial General Liability - Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products - Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "**The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant**".

2. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease - Policy Limit	\$500,000

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

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

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous

coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Consultant even if those limits of liability are in excess of those required by this Contract.
 2. The Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
 3. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to **Gila County Purchasing, 1400 E. Ash Street, 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 **Gila County Purchasing, 1400 E. Ash Street, 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 5 – LEGAL ARIZONA WORKERS ACT COMPLIANCE: Consultant hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Consultant’s employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). Consultant shall further ensure that each subcontractor who performs any work for Consultant under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Consultant and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.

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

Consultant shall advise each subcontractor of County’s rights, and the subcontractor’s obligations, under this Article by including a provision in each subcontract substantially in the following form: “Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor’s employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor’s books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

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

ARTICLE 6 – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Consultant shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant. The Consultant shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

ARTICLE 7– ANTI-TERRORISM WARRANTY: Pursuant to A.R.S. § 35-393.06(B) and 35-301.06(A) the Consultant certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

ARTICLE 8 – CANCELLATION: This agreement is subject to cancellation pursuant to A.R.S. §38-511. If the Agreement is terminated, the county shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination.

ARTICLE 9 – RELATIONSHIP OF THE PARTIES: Consultant is an independent Consultant of the County. Consultant represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this

contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Consultant warrants that he has obtained or will obtain Worker's Compensation Insurance for his employees working on this contract and that any subcontractors will likewise obtain Worker's Compensation Insurance for of their employees working on this contract. It is further agreed by Consultant that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Consultant nor any employee of the Consultant shall be deemed an officer, employee, or agent of the County.

ARTICLE 10 - NON-APPROPRIATIONS CLAUSE: Consultant acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Consultant of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Consultant for the same supplies or services covered under this Addendum.

ARTICLE 11 - NON-WAIVER OF ENFORCEABILITY: Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Consultant of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision

ARTICLE 12 - GOVERNING LAW: Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

ARTICLE 13- TERM: Upon Consultant receipt of the County Notice to Proceed the project completion shall be ninety (90) days unless otherwise extended by written agreement by both parties in the form of an amendment signed by the County.

ARTICLE 14 - PAYMENT/BILLING: Consultant shall be paid pursuant to the fee schedule in Exhibit "A" of this agreement but in no event shall payment exceed \$28,700.00 without prior written approval from the County Manager.

All invoices shall be submitted to Gila County Accounts Payable, 1400 E. Ash St, Globe, Arizona and include the following information:

- Purchase Order Number
- Contract Number
- Invoice Number
- Service Location
- Vendor Name and Address
- Description of Service

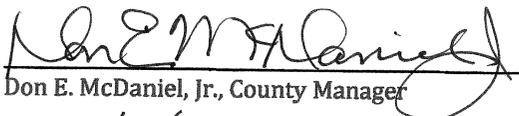
Any alterations to the scope of work resulting in a change in cost must have prior written approval by the County. Any unauthorized work may result in non-payment to the consultant.

Gila County employs a "Net 15" payment term for services meaning the payment will be issued fifteen (15) days from the date the County receives the invoice from the Consultant. Purchase orders sent to the Consultant reflect these terms and conditions.

The Consultant shall have a current I.R.S. W-9 form on file with the County unless not required by law. The County shall not remit payment if the Consultant does not have a current W-9.

IN WITNESS WHEREOF, two (2) identical counterparts of **Agreement No. 071912**, each for all purposes shall be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

GILA COUNTY


Don E. McDaniel, Jr., County Manager

Date: 8/14/12

CL WILLIAMS CONSULTING


Authorized Signature

PRESIDENT
Title

Date: 7-20-12

APPROVED AS TO FORM

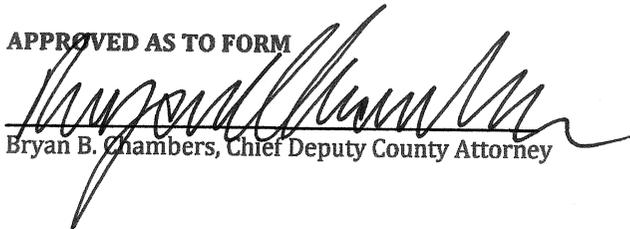

Bryan B. Chambers, Chief Deputy County Attorney

EXHIBIT "A"

SCOPE OF WORK

**MULTI-SECTOR GENERAL PERMIT (MSGP) &
STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

for

Four Mile & Pine Creek Materials Pits

July 11, 2012

Project Objective & Approach

Gila County has requested assistance from C.L. Williams Consulting (CLW) with the preparation of ADEQ permits (i.e., Multi-Sector General Permit and Stormwater Pollution Prevention Plan) for two existing materials pits located within the Pleasant Valley Ranger District of the Tonto National Forest (TNF) for the purposes of excavating aggregate materials for use in roadway maintenance, repair and construction (MSGP Sector J, Sub-sector J2, SIC code 1442 – Mining Class Permit) throughout the northern part of Gila County. Four Mile Materials Pit is located south of Young while the Pine Creek Materials Pit is located north of Young, Arizona.

For this project, CLW will develop the necessary Stormwater Pollution Prevention Plan (SWPPP) and associated Manual for the Best Management Practices (BMP) for each materials pit site. The Arizona Department of Environmental Quality (ADEQ) has jurisdiction over such facilities in regards to the discharge of stormwater and non-stormwater related activities from sites that disturbed an area equal to or greater than one acre (SWPPP) and certain industrial activities (MSGP). As these two pits are located in separate location, each site will require separate documentation and permitting.

Our understanding of the tasks to be performed by the various involved agencies is as follows:

Gila County will be responsible for the following task(s) as part of this project:

- Provide the funds for two legal notices in the Arizona Capital Times, to be prepared by the Pleasant Valley Ranger District.
- Submit the Notice of Intent, including all related fees, for both permits (MSGP and SWPPP) to the ADEQ no less than 7 days prior to construction.

The Pleasant Valley Ranger District (PVRD) will also be responsible for several tasks associated with this project.

- Provide cultural resources clearance for the project.
- Provide biological clearance for the project.
- Prepare the NEPA scoping document. This task will include: figures, maps, and coordinate the mailing list and sending out (via mail) to individuals on the list.
- Prepare the two legal notices for publication in the Arizona Capitol Times, and submit to the paper for publication.

The Tonto National Forest Supervisors Office (TNF) will be responsible for the following:

- Prepare the Categorical Exclusion statement and sign it (assuming that is the Decision of Record).
- The Categorical Exclusion is to be prepared by the PVRD; the TNF will provide NEPA support and coordination with the Forest Supervisor on review and approval of the document. Additionally, the Decision Memo is to be prepared by the PVRD; and TNF will again provide support and coordination with the Forest Supervisor on approval of the document.
- Prepare the Contract for Sale of Mineral Materials and sign it after the Categorical Exclusion is issued. TNF will prepare this document in coordination with PVRD, and coordinate approval by the Forest Supervisor.

In addition to the above, Gila County will provide to CLW sufficient survey data, or topographic mapping of the material pits and surrounding area sufficient (e.g., 50-100 feet outside the zone of anticipate excavation) to capture the anticipated maximum footprint of the area of excavation as well as enough surrounding data to determine critical inflow and outflow points around the site to carefully locate all necessary SWPPP BMPs features/improvements. The choice of the horizontal and vertical datum(s) will be NAD 1983 HARN Arizona State Plain, East Zone.

CLW will work closely with County staff to insure that the BMP's chosen for these sites are reasonable for County staff to construct and maintain throughout the life of the SWPPP.

In accordance with this project understanding, the consultant proposes to complete the Four Mile & Pine Creek Materials Pits MSGP & SWPPP project in accordance with the following Scope of Services:

Task 1: Progress Meetings, Coordination and Data Collection

CLW staff will meet and coordinate with the County and coordinate, as necessary, with ADEQ staff to insure the project goals are met. The following meetings are anticipated to meet project goals.

1. On-site Kickoff Meeting with representatives of the PVRD and TNF (assumes single meeting to account for both sites).
2. Draft SWPPP submittal and discussion meeting.
3. Interim SWPPP review and discussion meeting.
4. Final SWPPP submittal meeting to insure County designated contact(s) are familiar with SWPPP requirements and implementation.

The CLW Project Manager will attend all meetings and inform the County by telephone, fax or e-mail on progress relating to the project. Additional coordination/progress/public meetings may be added by the County as an additional service if the County so desires.

Task 2: Drainage Design

CLW will evaluate hydrologic conditions and design hydraulic systems to convey and mitigate sediment discharges outside each of the materials pits. The design events for this task will be the 2- and 10-year events along with a "check-event" of the 100-year rainfall event. The volume of necessary sediment storage within a given catch basin will be estimated (e.g., 5-7% of the hydrograph volume) as geotechnical sampling and analyses are considered outside the scope of this project. In order to reduce project costs, CLW will not prepare a detailed Report of Findings but will provide a "Letter of Findings" (i.e., summary, one each for each materials pit) of the analyses, assumptions and peak discharges for these sites that will be incorporated into the SWPPP Manual.

Where the contributing watershed is found to be outside the limits of the data provided to CLW through Item 1, CLW will use USGS 7.5 minute quadrangles to determine watershed boundaries.

Task 3: Stormwater Pollution Prevention Plan (SWPPP)

CLW will develop a Stormwater Pollution Prevention Plan (SWPPP) in accordance with State requirements and local practices.

Each SWPPP will be accompanied by a Manual that includes a narrative text, describing the method and procedures by which each individual facility will adhere to ADEQ's regulations. Best Management Practices (BMPs) will be recommended and designed, as applicable for each materials pit. The SWPPP will be provided to the County, PVRD and TNF at the 75% Interim stage for submittal, review and discussion. The final SWPPP will incorporate agency comments/direction.

The SWPPP will be prepared at a scale appropriate for the project size under evaluation and the BMP's required for each site. Each plan will include existing topography, final grading, existing facility elements and notes and details sufficient to describe the BMP method(s) required for each site.

ASSUMPTIONS

The following assumptions were used to develop this scope of work:

1. Public Involvement and additional Coordination Meetings beyond those identified herein are not required.
2. Utility Coordination Meetings are not required.
3. Water quality computer modeling, water quality monitoring and testing are not required.
4. Geotechnical sampling, testing and report preparation are not necessary.
5. Permit preparation, submittal and application fees (in any) are the responsibility of the Owner.
6. Preparation of General Construction permit is to be done by CLW but submitted to ADEQ by the Owner.
7. Structural analyses and design are not required for this project.
8. Determination of Threatened and Endangered Species and Cultural Resources sites are not required of CLW for this project.
9. Site visits beyond those identified herein are not necessary.
10. This scope and schedule assume that no Impaired Waters or Outstanding Waters discharge are associated with this site.
11. Each pit plan or area of excavation is a single unit and therefore does not consider individual pit with separated excavation zones.

SCHEDULE OF FEES

The work shall be done on a lump sum basis. Our Professional Fee Schedule for the tasks outlined in the Scope of Services is as follows:

Task Number	Task Description	Fee
1	Progress Meetings, Coordination and Data Collection	\$5,780
2	Drainage Design	\$9,520
3	Stormwater Pollution Prevention Plan (SWPPP)	\$13,400
	Total.....	<u>\$28,700</u>

Upon receipt of the Notice to Proceed the estimated time to complete this project is 90 calendar days for both material pits, excluding: ADEQ review and comment resolution time or and required public comment period(s).