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PROFESSIONAL SERVICE AGREEMENT NO. 040512

PINE CREEK CANYON ROAD RECONSTRUCTION PROJECT
MATERIAL SAMPLING, TESTING AND INSPECTION

THIS AGREEMENT, made and entered into this 2nd day of MAY, 2012, by and between Gila County a political subdivision of the State of Arizona, hereinafter designated the County, and **ATL, INC.**, of the City of Phoenix, State of Arizona, hereinafter designated the Contractor.

WITNESSETH: The Contractor, 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 Contractor shall provide for the complete provision in the scope of work below of the construction material testing for the Pine Creek Canyon Road Reconstruction Project in a good and workmanlike and substantial manner and to the satisfaction of the County under the direction of the Public Works Project Manager or designee.

The Contractor will provide material sampling, testing and inspection services in accordance with the project roadway improvement plans and specifications stated and as referenced within the bid documentations of the project for the road reconstruction only. The waterline construction testing is not included in this agreement. The scope of service will include:

- Contractor review of project plans and specifications.
- Material sampling, testing and inspection including all necessary documentation and results submitted by the Contractor to the County with appropriate certifications.
- Contractor coordination of material sampling schedule with the County.
- The County shall pay for the initial testing of material. If a test fails retesting will be at the expense of the general contractor.

Additional Information:

- Contractor is an AASHTO Accredited Laboratory
- Contractor is certified as an MBE/DBE/SBE with city, county, and state agencies to provide construction management, construction specialty inspections, construction materials testing, and geotechnical engineering services.
- Contractor's Phoenix/Globe laboratory will be utilized for this project.

CONTRACTOR FEES

The Contractor's fees for construction materials testing services will be based upon applicable unit prices. 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 Contractor 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: Contractor 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 Contractor 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 contractor 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 Contractor from and against any and all claims. It is agreed that Contractor 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 Contractor 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 Contractor for the County.

ARTICLE 4 – INSURANCE REQUIREMENTS: Contractor 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 Contractor, 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 Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

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

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.

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 Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Contractor 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 St., Globe, AZ, 85501** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor 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 St., Globe, AZ, 85501**. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Contractor 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: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who

performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

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

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

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

ARTICLE 6 – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor. The Contractor 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 Contractor 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: Contractor is an independent contractor of the County. Contractor 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. Contractor 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 Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to

provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

ARTICLE 10 – NON-APPROPRIATIONS CLAUSE: Contractor 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 Contractor 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 Contractor for the same supplies or services covered under this Addendum.

ARTICLE 11 – ENTIRE CONTRACT CLAUSE: The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral agreement or oral provision outside this Contract shall have any force or effect

ARTICLE 12 – 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 Contractor 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 13 – 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 14– TERM: The term of the agreement shall commence date signed by the County Manager and continue to December 31, 2012, unless canceled or extended as otherwise provided herein.

ARTICLE 15 – PAYMENT/BILLING: Contractor shall be paid pursuant to the attached fee schedule in Article 1 of this agreement, but in no event shall payment exceed **$35,000.00** without prior written approval from the County.

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 vendor.

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 Contractor. Purchase orders sent to the Contractor reflect these terms and conditions.

The Contractor 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 Contractor does not have a current W-9.

IN WITNESS WHEREOF, *Professional Service Agreement No. 040512 has 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: 5/1/12

ATL, INC.

Signature

Frank Rivera, CEO

Print Name

Date: 4/26/12

APPROVED AS TO FORM

Bryan B. Chambers, Chief Deputy County Attorney

EXHIBIT "A"

ATL, INC.
Excellence in Quality
ATL, Inc.

Gila County Pine Creek Canyon Rd Reconstruction Project No. 040512

Field	Rates
Principal (Hourly)	$ 125.00
Registered Engineer (Hourly)	$ 105.00
Project Manager (Hourly)	$ 90.00
Staff Engineer (Hourly)	$ 74.00
QC Supervisor/Steel Inspection Supervisor (Hourly)	$ 80.00
Construction Technician II (Hourly)	$ 46.00
Construction Technician III (Hourly)	$ 55.00
Construction Inspector – (Hourly)	$ 62.00
Lead Technician (Hourly)	$ 59.00
Steel Inspector – UT/MT/Skidmore (Hourly)	$ 65.00
Clerical (Hourly)	$ 38.00
Trip Charge (Local)	$ 75.00
Overtime (Hourly)	1.35 X ST

LABORATORY CONCRETE

Concrete Cores (Each) (Compressive Strength-includes Saw-Cut ASTM C-42, C-39)	$ 24.00

Concrete Mix Design (Trial Batch Method)	$ 1,100.00
Concrete Mix Design (Review)	$ 625.00
Soil – Cement Mix Design (Each) (3 Cement Contents Only – ASTM D-2901)	$ 1,000.00
Concrete Cylinders (Each) (Compressive Strength – ASTM C-39)	$ 13.00
Concrete Cylinders – Hold (Each) (Compressive Strength)	$ 6.00
Flexural Beam Testing – Break Only (Each) (ASTM C-31)	$ 25.00
Grout & Mortar Cube (Each) (Compressive Strength – ASTM C-109)	$ 18.00
Masonry Prisms - Ungrouted (Each) (Compressive Strength – 8" x 16" x 16" – ASTM C-140)	$ 58.00
Masonry Prisms - Grouted (Each) (Compressive Strength – 8" x 16" x 16" – ASTM C-140)	$ 70.00
Masonry Prisms - Ungrouted (Each) (Compressive Strength – 12" x 16" x 16" – ASTM C-140)	$ 105.00
Masonry Prisms - Grouted (Each) (Compressive Strength – 12" x 16" x 16" – ASTM C-140)	$ 20.00

AGGREGATE / SOIL

Sieve Analysis (Each) (Washed - ASTM C-136)	$ 52.00
Sieve Analysis, Clayey Material (Each) (Washed – ASTM C-136)	$ 100.00
200 Sieve Analysis (Each)	$ 65.00
Aggregate Unit Weight (Each) (Rodded Weight - ASTM C-29)	$ 45.00

Specific Gravities / Absorption – Coarse (Each) (ASTM C-127)	$ 55.00
Specific Gravities / Absorption – Fine (Each) (ASTM C-123)	$ 70.00
Sand Equivalent Test (Each) (ASTM D-2419)	$ 75.00
Plasticity Index (Each) (ASTM D-424)	$ 50.00
Liquid Limits (Each) (ASTM D-423)	$ 55.00
Standard Proctor (Each) (ASTM D-698)	$ 100.00
Modified Proctor (Each) (ASTM D-1557)	$ 125.00
Uncompacted Voids of Fine Aggregate (Each) (Without Specific Gravity – TP-33)	$ 85.00
Flat and Elongated Particles (Each) (ASTM D-4791)	$ 85.00
Flakiness Index (Each)	$ 70.00
LA Abrasion (Each) (ASTM C-131)	$ 120.00

AGGREGATE / SOIL

Fractured Faces (Each) (ARIZ 212-D)	$ 65.00
Sodium/Sulfate Soundness (per screen) (ASTM C-88)	$ 45.00
Hydrometer Analysis (Each) (ASTM D-422)	$ 115.00
Clay Lumps / Friable Faces (Each) (Coarse or Fine - ASTM C-142)	$ 100.00

Consolidation (Each) (Loading in increments w/two rebounds – ASTM D-2435)	$ 175.00
Swell / Collapse (Each)	$ 70.00
Aggregate Durability Test (Each) (Coarse)	$ 115.00
Aggregate Durability Test (Each) (Fine)	$ 95.00
In – Situ Moisture Content (Each) (AASHTO T-220, ASTM C-566)	$ 12.00
R-Value (Set) (AASHTO T-190, ASTM D-2844)	$ 275.00
Visual Classification (Each)	$ 20.00
Splitting of Test Samples (Each)	$ 35.00
Permeability (Each)	$ 145.00
Percolation Test (Each)	$ 1,775.00

ASPHALT

Mix Design, 4 Points (Each)	$ 1,300.00
Superpave Mix Design	$ 4,200.00
Lab Mixing & Compacting for Marshall Plugs (Hourly) (ASTM D-1559)	$ 64.00
Marshall Stability & Flow (Set of 3) (ASTM D-1559)	$ 90.00
Marshall Density Tests (Set of 3) (ASTM D-1186)	$ 90.00
Immersion Compression (Set of 6)	$ 280.00
Max. Theoretical Specific Gravity (Each) (ASTM D-2041)	$ 55.00

Field Core Density/Thickness (Each) (NEV T-366A)	$ 22.00
Bitumen/Grading (Each) (ASTM D-136)	$ 110.00
Viscosity Kinemetic (Each)	$ 95.00
Thin Film Oven Test (Each)	$ 115.00
Compact Marshall Plugs (Set of 3)	$ 65.00
Oil Solubility in TCE (Each)	$ 58.00
Flash Point, Clev or Tag (Each)	$ 90.00
Penetration (Each)	$ 50.00
Ductility (Each)	$ 70.00
Viscosity, Absolute (Each)	$ 90.00
Ignition Oven – Asphalt Cement Content (Each)	$ 80.00
Ignition Oven - Gradation (Each)	$ 85.00
Ignition Oven - Calibration (Each)	$ 300.00
Moisture Determination (Each)	$ 30.00
Marshall Compaction, Unit Weight, Stability, & Flow (Each)	$ 115.00
Gyratory Compaction, Unit Weight (Each)	$ 30.00
Rice Test (Each)	$ 57.00
Bulk Specific Gravity of Compaction Cores (Each)	$ 35.00
Nuclear Gauge Determination - Calibration (Each)	$ 300.00
Nuclear Gauge Determination – Asphalt Cement Content (Each)	$ 55.00
Cold Feed Gradation (Each)	$ 85.00