

ReSEED, LLC

STANDARD AGREEMENT BETWEEN CLIENT AND CONSULTANT
Proposal No. GilaCounty-001

This is an agreement made as of April, 16, 2013 between ReSEED, LLC (CONSULTANT) and Gila County (CLIENT). CLIENT desires to obtain consulting services regarding transportation improvements in Arizona, related to US 60 – Silver King Section & Superior Streets in the Arizona Department of Transportation (ADOT) 5-year Transportation Construction Plan (TCP) hereinafter called the PROJECT.

The **Scope of Services** shall include those listed on **Attachment A: Scope of Services**.

This Agreement includes the **Gila County Contractor Standard Agreement Terms and Conditions Addendum** included in **Attachment B** and the **Gila County Insurance Requirements** included as **Attachment C**.

Fee for Services

CLIENT and CONSULTANT in consideration of their mutual covenants herein agree with respect to the performance of professional services by CONSULTANT and the payment for those services by CLIENT as set forth below:

- A non-refundable deposit covering CONSULTANT'S time and expenses in the amount of: \$ 10,000 to be paid at time of execution of agreement.
- A Final Consulting Fee of : \$10,000. A Final Consulting Fee of \$10,000 shall be paid if the PROJECT is fully funded in year 1 or 2 (2014 or 2015) of the 5-year TCP

In witness whereof, the parties have made and executed this Agreement, effective as of the date of execution by CLIENT.

CLIENT
SIGNATURE: _____

CONSULTANT
SIGNATURE: 

Gila County

ReSEED, LLC

By: Don E. McDaniel, Jr.

By: Felipe A. Zubia

Title: County Manager

Title: Principal

Date: _____, 2013

Date: 4-11, 2013

Telephone: 928-425-3231 ext. 8761

Telephone: 602-670-2255

Address for giving notice:

Address for giving notice:

Gila County – Globe Office

ReSEED

1400 E. Ash St.

420 W. Roosevelt #107

Globe, AZ 85501

Phoenix, AZ 85003

Email address: dmcDaniel@gilacountyaz.gov

Email address: felipez@reseedllc.com

ATTACHMENT A: SCOPE OF SERVICES

- Work with Gila County to review the Arizona Department of Transportation (ADOT) 2014-2018 Five-Year Construction Program to determine opportunities to include funding for construction of the PROJECT, US 60 – Silver King Section & Superior Streets, in the TCP in FY 2014 or FY 2015.
- The objective of this scope is to fully fund the PROJECT for construction, as soon as possible, but no later than FY 2015 of the Arizona Department of Transportation (ADOT) 2014-2018 Five-Year Construction Program.
- Should the CONSULTANT successfully achieve this objective, the CLIENT will pay the CONSULTANT a Final Consulting Fee of \$10,000, if the PROJECT is fully funded by FY 2015, to be paid within thirty (30) days of the State Transportation Board action approving the 2014-2018 5-year TCP.
- A Final Consulting Fee will NOT be paid if the PROJECT is fully funded in FY 2016 or later.

ATTACHMENT "B"

Gila County Contractor Standard Terms and Conditions Addendum

A. Addendum Applicability

Contractor and Gila County agree that the terms and conditions of this Addendum shall apply to and govern the contractual relationship between Contractor and Gila County and shall supplement any other contract or agreement entered into between the parties. In the event that the terms and conditions in this Addendum conflict with any provision of any other agreement entered into between the Contractor and Gila County (including a superiority provision similar to this provision), the terms and conditions of this Addendum shall control the contractual relationship between the parties and shall supersede any conflicting provisions found in any other contract or agreement. Contractor understands that acceptance of the terms and conditions contained in this Addendum is a condition precedent to entering into a contractual relationship with Gila County.

B. Contract Defined

As used in this Addendum, the term "Contract" shall refer to any written agreement between Gila County and a person, organization, corporation, company or other entity that provides supplies or services to Gila County regardless of the title or other name applied to that written agreement. The term includes by this reference all the terms and conditions of this Addendum.

C. Contractor Defined

As used in this Addendum, the term "Contractor" shall refer to a person, provider, organization, corporation, company or other entity providing supplies or services to Gila County pursuant to a written agreement regardless of the title or other name applied to "Contractor" in that written agreement.

D. Relationship to 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. 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.

E. 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.

F. Hold Harmless/Indemnification Clause

Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that the 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.

G. 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 provision in conflict with this Contract shall have any force or effect.

H. 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.

I. 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.

J. Cancellation

Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

K. Anti-Terrorism Warranty

Pursuant to A.R.S. §35-397 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.

L. Legal Arizona Workers Act Compliance

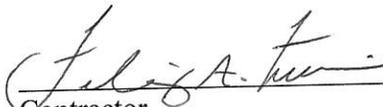
Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall 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.



Contractor

4-11-2013

Date

Gila County

Date

ATTACHMENT "C"

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 Jeannie Sgroi, 1400 E. Ash St., Globe, AZ 85501 and shall be sent by certified mail, return receipt requested.

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

E. **VERIFICATION OF COVERAGE:** Consultant shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to Jeannie Sgroi, 1400 E. Ash St., Globe, AZ 85501 or may be emailed to Ms. Sgroi at dsgroi@co.gila.az.us. 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.