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Lang Baker & Klain, PLC

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LBK File No: 2477-002

April 10, 2013

Via Certified Mail—Return Receipt Requested

Marian E. Sheppard
Gila County
Clerk of the Board
1400 E. Ash Street
Globe, AZ 85501

Roland Boyer
Gila County
Public Works Division
1400 W. Ash Street
Globe, AZ 85501

Chuck Williams
Joseph Alwin
C.L. Williams Consulting, Inc.
621 S. Hillside Lane
Pinetop, AZ 85935

NOTICE OF CLAIM

PURSUANT TO A.R.S. § 12-821.01, CLAIMANT AJP ELECTRIC SENDS THIS NOTICE OF CLAIM TO GILA COUNTY AND ANY OTHER PUBLIC ENTITIES AND EMPLOYEES REGARDING ANY AND ALL POSSIBLE CAUSES OF ACTION SUPPORTED BY THE FACTS STATED BELOW

**Re: *AJP Electric, Inc. ("AJP") v. Gila County
Gila County PWD Complex – Roadyard Shop Paving Phase (the "Project")
Outstanding Balance of \$30,691.25***

To Whom It May Concern:

Please let this correspondence serve as a formal Notice of Claim to Gila County from AJP through undersigned counsel. This Notice shall extend to any and all agents, employees, or other representatives of Gila County responsible for AJP's damages detailed herein.

In or around Fall 2011, Gila County contracted with AJP to procure and place asphalt at the Project. Pursuant to the Project Specifications, Gila County was responsible for quality control on the Project, and the County hired ATL, Inc. ("ATL") to fulfill that role. On or about February 7, 2012, AJP placed the asphalt with representatives from Gila County and ATL present. According to ATL at the time, the asphalt density was well within standards.

On June 28, 2012, AJP was contacted by the County's consultant, C.L. Williams Consulting, Inc., who claimed that core samples showed that the asphalt was deficient. Gila County withheld payment to AJP based on this deficiency.

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AJP responded with ample evidence that the deficiency was due to ATL's faulty and incomplete testing of the asphalt and failure to take core samples at or near the time the asphalt was placed, as is standard in the industry. Put simply, the County did not fulfill its quality-control duties under the Project Specifications. AJP was entitled to rely on the County to fulfill those duties, and therefore, AJP is not liable for the deficient asphalt.

Despite this fact, AJP has worked diligently to help remedy the issue, including performing substantial remedial work at its own cost. AJP even offered to share the cost of additional repairs with ATL and Gila County. Despite this attempt at compromise, the county has steadfastly refused to accept any responsibility for the current situation. Accordingly, AJP has been left no choice but to demand payment in full, and to move forward with litigation unless Gila County makes payment immediately.

AJP invoiced Gila County on October 8, 2012 (the "Invoice") in the amount of \$30,691.25. Be advised that, under A.R.S. § 34-221(C)(2), the Invoice was deemed "certified and approved" once the County failed to object to the Invoice in writing within seven days. As such, the County was legally required to pay the Invoice by October 31, 2012, at the latest.

Understand that, should AJP be forced to sue the County, AJP will be entitled to recover its attorneys' fees and costs, plus 18% interest per annum pursuant to the terms of the Invoice. Note that AJP's attorneys' fees already exceed \$5,000.00, a figure that will increase dramatically once suit is filed.

However, AJP is willing to forgo collection of those fees and, instead, settle all of its claims against Gila County stemming from the Project in exchange for payment of \$30,691.25, to be paid to AJP no later than 7 days from the date of this letter. If payment is not received by then, AJP will immediately file the draft lawsuit attached hereto as Exhibit A.

It is believed that you are the individual(s) whom AJP was required to serve this Notice. However, if this is not the case, or if any further information or documentation is required to process this Notice, please notify me immediately.

All further correspondence regarding this matter should be directed to Lang Baker & Klain, PLC at the address stated above. Please do not hesitate to contact our office should you have any questions or wish to further discuss this matter.

Sincerely,

LANG BAKER & KLAIN, PLC



Kent A. Lang

EXHIBIT A

1 **LANG BAKER & KLAIN, PLC**

8767 E. VIA DE COMMERCIO, SUITE 102

2 SCOTTSDALE, ARIZONA 85258

TELEPHONE (480) 947-1911

3 FilingKAL@lang-baker.com

4 KENT A. LANG, #010041

MICHAEL W. THAL, #023843

5 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF ARIZONA**

8 **GILA COUNTY**

9 AJP ELECTRIC, INC., an Arizona
corporation,

10 Plaintiff,

11 v.

12 GILA COUNTY, a political subdivision of
13 the State of Arizona,

14 Defendant.

Case No.

15 **COMPLAINT**

**(Breach of Contract, Unjust Enrichment,
Violation of A.R.S. § 34-221, et seq.)**

16 Plaintiff AJP Electric, Inc., for its Complaint against Defendant Gila County, states and
17 alleges as follows:

18 **PARTIES, VENUE, AND JURISDICTION**

19 1. Plaintiff AJP Electric, Inc. ("AJP") is, and was at all times relevant hereto, an
20 Arizona corporation with its principal place of business in Maricopa County, Arizona.

21 2. AJP is, and was at all times relevant hereto, a duly licensed contractor holding the
22 following Arizona contractor's licenses: Class A-17 Electrical and Transmission Lines
23 License No. 101195, Class L-11 Electrical License No. 101196 and Class A General
24 Engineering License No. 146006.

25 3. Upon information and belief, Defendant Gila County ("Gila County") was, at all
26 times relevant hereto, a political subdivision of the State of Arizona, and existed as such
27 under the laws of the State of Arizona.

28 4. The amount in controversy exceeds this Court's minimum jurisdictional

1 requirement.

2 5. This Court has jurisdiction over this matter on the basis that the activities
3 complained of herein occurred in Gila County, Arizona.

4 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

5 **GENERAL ALLEGATIONS**

6 7. AJP incorporates by reference all previous allegations.

7 8. In or around Fall 2011, Gila County entered into a contract (the "Contract") with
8 AJP to procure and place asphalt at the project called "PWD Complex – Roadyard Shop
9 Paving Phase" (the "Project") located at approximately 1001 W. Besich Blvd. in Globe,
10 Arizona.

11 9. Pursuant to the Project Specifications, Gila County was responsible for quality
12 control on the Project, and the County hired ATL, Inc. ("ATL") to fulfill that role.

13 10. On or about February 7, 2012, AJP placed the asphalt with representatives from
14 Gila County and ATL present.

15 11. Shortly after AJP placed the asphalt at the Project, ATL purported to test it and
16 indicated that it was within standards at that time.

17 12. Based on ATL's indication that the asphalt was within standards, AJP allowed the
18 asphalt to cure.

19 13. On June 28, 2012, AJP was contacted by Gila County's consultant, C.L. Williams
20 Consulting, Inc., who claimed that the asphalt was deficient.

21 14. Gila County withheld payment to AJP based on the alleged deficiency of the
22 asphalt.

23 15. AJP provided the County with evidence that the deficiency was due to ATL's
24 faulty and incomplete testing of the asphalt and failure to take core samples at or near the
25 time the asphalt was placed, as is standard in the industry.

26 16. AJP invoiced Gila County on October 8, 2012 (the "Invoice") in the amount of
27 \$30,691.25.

28 17. Despite AJP's repeated demands, Gila County has failed and refused to pay the

1 invoice without excuse.

2 **COUNT ONE**
3 **(Breach of Contract)**

4 18. AJP incorporates by reference all previous allegations.

5 19. AJP fully performed its work under the Contract for all Phases, and all conditions
6 precedent to AJP's right to receive payment have occurred or otherwise been satisfied.

7 20. Despite repeated demand therefor, Gila County has failed and refused to pay AJP
8 for the work that AJP did on the Project.

9 21. Gila County's failure and refusal to pay AJP the sums due and owing constitutes a
10 material breach of the Contract.

11 22. Gila County is indebted to AJP in the principal amount stated in the Invoice,
12 \$30,691.25.

13 23. This matter arises out of contract within the meaning of A.R.S. § 12-341.01.

14 WHEREFORE, AJP requests that this Court enter judgment in its favor and against Gila
15 County as follows:

16 A. For damages in the amount of \$30,691.25;

17 B. For pre-judgment and post-judgment interest thereon at the rate of 12 percent
18 (12%) per annum from the due date until paid in full pursuant to A.R.S. § 34-221(C), or,
19 alternatively, at the highest rate allowed by law;

20 C. For AJP's reasonable attorneys' fees incurred herein pursuant to A.R.S. § 12-
21 341.01;

22 D. For AJP's costs incurred herein and hereafter accruing pursuant to A.R.S. § 12-
23 341;

24 E. For interest on all attorneys' fees and costs awarded at the rate of ten percent
25 (10%) per annum from the date of the judgment until paid in full; and

26 F. For such other and further relief as this Court may deem just under the
27 circumstances.

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COUNT TWO

(Unjust Enrichment)

24. AJP incorporates by reference all previous allegations.

25. To the extent that the Contract may be determined to be unenforceable, AJP has no adequate remedy at law and pleads unjust enrichment in the alternative.

26. AJP conferred a benefit on Gila County by providing services, materials, equipment, fixtures, and tools for the benefit of the Project at Gila County's request. Said benefit has enriched Gila County, which has not compensated AJP for the benefit it conferred with respect to the Project.

27. AJP did not provide the benefits gratuitously, but at the express request of Gila County, and with the reasonable expectation of compensation.

28. There is no justification for Gila County's enrichment at AJP's expense, or, conversely, for AJP's impoverishment for the benefit of Gila County.

29. It would be unjust and inequitable for Gila County to retain the benefits conferred by AJP without paying AJP therefor.

30. This matter arises out of contract within the meaning of A.R.S. § 12-341.01.

WHEREFORE, AJP requests that this Court enter judgment in its favor and against Gila County as follows:

A. For the reasonable value of the benefit conferred by AJP, in such amount as may be proven at trial;

B. For pre-judgment and post-judgment interest thereon at the rate of 12 percent (12%) per annum from the due date until paid in full pursuant to A.R.S. § 34-221(C), or, alternatively, at the highest rate allowed by law;

C. For AJP's reasonable attorneys' fees incurred herein pursuant to A.R.S. § 12-341.01;

D. For AJP's costs incurred herein and hereafter accruing pursuant to A.R.S. § 12-341;

E. For interest on all attorneys' fees and costs awarded at the rate of ten percent

1 (10%) per annum from the date of the judgment until paid in full; and

2 F. For such other and further relief as this Court may deem just under the
3 circumstances.

4 **COUNT THREE**

5 **(Violation of A.R.S. § 34-221, et seq.)**

6 31. AJP incorporates by reference all previous allegations.

7 32. Pursuant to A.R.S. § 34-221, et seq., AJP is entitled to payment from Gila County
8 for the work it performed under the Contract.

9 33. AJP provided Gila County with a billing for the work that AJP performed on the
10 Project on October 8, 2012 by submitting the Invoice.

11 34. Pursuant to A.R.S. § 34-221(C)(2), a billing for a progress payment shall be deemed
12 certified and approved seven days after its receipt by the owner, unless before that time, the
13 owner provides a written statement explaining why the billing is not certified or approved.

14 35. Gila County did not make a written objection to the Invoice within seven days of its
15 receipt of same.

16 WHEREFORE, AJP requests that this Court enter judgment in its favor and against Gila
17 County as follows:

18 A. For damages in the amount of \$30,691.25;

19 B. For pre-judgment and post-judgment interest thereon at the rate of 12 percent
20 (12%) per annum from the due date until paid in full pursuant to A.R.S. § 34-221(C), or,
21 alternatively, at the highest rate allowed by law;

22 C. For AJP's reasonable attorneys' fees incurred herein pursuant to A.R.S. § 12-
23 341.01;

24 D. For AJP's costs incurred herein and hereafter accruing pursuant to A.R.S. § 12-
25 341;

26 E. For interest on all attorneys' fees and costs awarded at the rate of ten percent
27 (10%) per annum from the date of the judgment until paid in full; and

28 F. For such other and further relief as this Court may deem just under the

1 circumstances.

2 DATED this 10th day of April, 2013.

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LANG BAKER & KLAIN, PLC



DRAFT

By: _____
Kent A. Lang
Michael W. Thal
Attorneys for Plaintiff