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GILA COUNTY

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## PROFESSIONAL CONSULTING SERVICES

CONTRACT NO. 022014

### DIESEL FUEL SPILL TESTING AT YOUNG, AZ YARD

**THIS AGREEMENT**, made and entered into this 26TH day of FEBRUARY, 2014, by and between Gila County, a political subdivision of the State of Arizona, hereinafter designated the **COUNTY**, and Atwell, LLC of the City of Mesa, County of Maricopa, State of Arizona, hereinafter designated the **CONSULTANT**.

**WITNESSETH:** That 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 agreements herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

**ARTICLE I – SCOPE OF SERVICES:** The Consultant will perform testing of samples, excavated by Gila County, from the Young, AZ yard to determine the extent and nature of contamination of a diesel overfill at an above ground storage tank that occurred on February 17, 2014. Gila County will excavate the spill, and sample the base of the excavation, to determine if sufficient excavation has occurred. The excavated stockpile will be sampled by compositing a representative sample of the excavated material. The samples will be shipped to Atwell, LLC, who will submit them to a laboratory for testing of PAHs and diesel range organics. Following receipt of results, Atwell will review the results and determine if sufficient soil was excavated. Additionally, Atwell will provide recommendations for disposal options for the stockpile material. The County will pay for transportation and disposal costs.

**ARTICLE II – SCHEDULE AND FEES:** Atwell will conduct the above scope of services for a lump sum fee of \$ 1,050.00. If additional work is necessary, (i.e. conducting additional sample testing), Atwell will perform the work on a time and materials basis per the rates as outlined on Exhibit "A". Exhibit "A" by mention is made a binding part of this agreement as set forth herein. To the extent that the terms and conditions of this contract conflict with the Terms and Conditions of Exhibit "A", the terms and conditions of this contract will prevail and govern the contractual relationship between the parties.

**ARTICLE III – INDEMNIFICATION CLAUSE:** 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 the 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 IV - 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 mailed directly to Jeannie Sgroi, 1400 E. Ash St., Globe, AZ 85501 or email to Jeannie Sgroi at [jsgroi@gilacountyaz.gov](mailto:jsgroi@gilacountyaz.gov). 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 V – 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 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 VI – 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 VII – CANCELLATION:** This agreement is subject to cancellation pursuant to A.R.S. § 38-511. If this 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. The Consultant shall be considered in default of this contract and such default will be considered as cause to terminate the contract for any of the following reasons if the Consultant:

- a. Fails to perform the work under the contract within the time specified in the "Notice to Proceed"; or
- b. Fails to perform the work or fails to provide sufficient workers, equipment or data to assure completion of work in accordance with the terms of the contract; or
- c. Performs the work unsuitably or neglects or refuses to follow the Scope of Work; or
- d. Discontinues the prosecution of the work; or
- e. Fails to resume work which as been discontinued within a reasonable time after notice to do so; or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
- g. Makes assignment for the benefit of creditors.
- h. If it is found that gratuities were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of the County.

**ARTICLE VIII – A.R.S. §35-397:** Pursuant to A.R.S. §35-397 the Consultant certifies that it does not have scrutinized business operations in Iran or Sudan and in compliance with the Export Administration Act and not on the Excluded Parties List.

**ARTICLE IX – CONTRACT PERIOD:** Contract shall be in effect from date signed by County Manager through May 31, 2014.

**ARTICLE X – PAYMENT:** The Scope of Services as outlined above will be performed on a lump sum basis with a not-to-exceed without written authorization budget of \$ 1,050.00. Additional work, as authorized, will be performed on a Time and Materials basis, per a mutually agreed upon fee, prior to the execution of the additional work, between the County and the Consultant.

Each invoice must include itemized task and dollar figure for each task completed. Each invoice must show a signature by the County representative confirming services rendered and authorizing payment.

**IN WITNESS WHEREOF**, two (2) identical counterparts of this contract, each which shall include original signatures and for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

In return for the performance of the Contract by the **Consultant**, the **County** agrees to pay the **Consultant** amount of not more than \$1,050.00 including all applicable taxes through a payment schedule as described in the Contract documents and as may be modified and executed by change orders.

**GILA COUNTY PROFESSIONAL CONSULTING SERVICES CONTRACT NO. 022014**

**GILA COUNTY:**

  
\_\_\_\_\_  
Don E. McDaniel , County Manager

**ATWELL, LLC:**

  
\_\_\_\_\_  
Signature of Consultant

  
\_\_\_\_\_  
Print Name



**EXHIBIT A'**  
**ATWELL, LLC PROFESSIONAL SERVICES**  
**2012 FEE SCHEDULE**  
**EFFECTIVE JANUARY 1, 2012**

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Senior Project Manager .....	\$179/hour
Project Manager I-II.....	\$142 to \$157/hour
Project Coordinator.....	\$129/hour
<b>Engineering Services</b>	
Senior Project Engineer .....	\$157/hour
Engineer/Designer I-V .....	\$95 to \$142/hour
Engineer Technician.....	\$ 89/hour
<b>Surveying Services</b>	
Senior Project Surveyor.....	\$157/hour
Project Surveyor I-V.....	\$95 to \$142/hour
Survey Technician .....	\$ 89/hour
One Man Crew.....	\$99 to \$115/hour
Two Man Crew .....	\$135 to \$162/hour
<b>Planning/Landscape Design Services</b>	
Senior Project Planner .....	\$157/hour
Planner/Designer I-V .....	\$95 to \$142/hour
Planning Technician.....	\$ 89/hour
<b>Environmental Services</b>	
Senior Environmental Consultant .....	\$157/hour
Environmental Consultant I-V.....	\$95 to \$142/hour
Environmental Technicians I-II.....	\$75 to \$ 83/hour
<b>CAD/GIS Services</b>	
CAD Technician I-II .....	\$75 to \$ 83/hour
GIS Analyst/Technician .....	\$89 to \$ 95/hour
<b>Administrative Services</b>	
Firm Principal .....	\$225/hour
Expert Testimony.....	\$295/hour
<b>Specialty Equipment</b>	
Laser Scanner .....	\$500/half day - \$1,000/full day
Nuclear Density Gauge .....	\$50/day
ATV .....	\$150/day
Ground Penetrating Radar.....	\$500/day
Photolionization Detector (PID).....	\$75/day
4 – Gas Monitor with Remote Sensor .....	\$50/day

Direct reimbursable expenses such as travel expenses, meals and lodging, postage and shipping, outside reproductions, document purchases, and sub-consultants shall be billed at cost plus 15%. Mileage shall be billed at current IRS allowable rate. All other project reimbursable expenses shall be billed in accordance with the attached Reimbursable Fee Schedule. All permit, application, and submittal fees shall be paid directly by the client.