

**AGREEMENT FOR  
MATERIALS TESTING PROFESSIONAL SERVICES**

**CITY OF FLAGSTAFF  
and**

**ATL, INC.**

This Agreement for a City of Flagstaff Materials Testing Professional Services ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and ATL, Inc., with an office at 2921 N. 30<sup>th</sup> Ave, Phoenix, Maricopa County, Arizona ("Provider"), effective as of the date written below.

**RECITALS**

- A. The City desires to enter into this Agreement for Materials Testing Professional Services and
- B. Provider has available and offers to provide the qualified personnel, materials and equipment necessary to organize and provide said services in accordance with the Scope of Work, attached to this Agreement as Exhibit A;

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

**1. SERVICES TO BE PERFORMED BY PROVIDER**

Provider agrees to provide the services, as set forth in detail in Exhibits "A" and "B" attached hereto and hereby incorporated as part of this Agreement and adopted by reference.

**2. COMPENSATION OF PROVIDER**

The City agrees to make payment, in the amount of \$172,940.00 to Provider to render the services set forth in Exhibits "A" and "B".

**3. RIGHTS AND OBLIGATIONS OF PROVIDER**

3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement. Provider is not obligated to accept all requests for services, depending on circumstances with other work being performed for other clients.

3.2 Provider's Control of Work. All services to be provided by Provider shall be performed as determined by the City in accordance with the Scope of Services set forth in Exhibits "A" and "B" Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

3.3 Reports to the City. Although Provider is responsible for control and supervision of work

performed under this Agreement, the services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports if requested by the City to be provided by Provider to the City and the right of the City, and the right of the City to audit Provider's records.

3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

#### **4. NOTICE PROVISIONS**

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City's Authorized Representative:

Randy Groth  
Senior Project Manager  
City of Flagstaff  
211 W. Aspen  
Flagstaff, Arizona 86001

To Provider:

Frank Rivera  
President  
ATL, Inc.  
2921 N. 30<sup>th</sup> Ave  
Phoenix, Arizona 85017

#### **5. INDEMNIFICATION**

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Flagstaff 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, in whole or in part, by the negligent, reckless or willful acts or omissions of Provider 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 Provider 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, reckless or willful acts or omissions of the Indemnatee, be indemnified by Provider from and against any and all claims caused in whole or in part, by the negligent, reckless or willful acts or omissions of the Provider. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

#### **6. INSURANCE**

Provider and subcontractors, if any, shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement 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 Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no



6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

**Rick Compau, C.P.M., CPPO, CPPB**  
**Purchasing Director**  
**City of Flagstaff, Purchasing Division**  
**211 W. Aspen Ave.**  
**Flagstaff, Arizona 86001**

6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.

6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Rick Compau, C.P.M., CPPO, CPPB, Purchasing Director, City of Flagstaff, Purchasing Division, 211 W. Aspen Ave., Flagstaff, AZ. 86001.** The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

## 7. **DEFAULT AND TERMINATION**

7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows

Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.2.3 Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

## **8. GENERAL PROVISIONS**

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by either the City or Provider without prior written consent of the other.

8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.7 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.8 Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.9 Non-appropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, the City shall notify Provider of such occurrence, and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds

appropriated for payment under this Agreement are exhausted. No payments shall be made or due to Provider under this Agreement beyond these amounts appropriated and budgeted by the City to fund payments under this Agreement.

8.10 Compliance with Federal Immigration Laws and Regulations. Provider hereby warrants to the City that the Provider and each of its subcontractors (“Subcontractors”) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter “Provider Immigration Warranty”).

A breach of the Provider Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who works on this Agreement to ensure that the Provider or Subcontractor is complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Provider and any of subcontractors to ensure compliance with Provider’s Immigration Warranty. Provider agrees to assist the City in regard to any random verifications performed.

The provisions of this Article must be included in any contract the Provider enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.11 Subcontractors. This Agreement or any portion thereof shall not be sub-contracted without the prior written approval of the City. No Subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any Subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

8.12 Waiver. No failure to enforce any condition or covenant of this Agreement by the City shall imply or constitute a waiver of the right of the City to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

## **9. DURATION**

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force for an initial term of three (3) years, beginning April 1, 2014 through March 31, 2017, unless sooner terminated as provided above. Upon mutual agreement between the City and Provider, this Agreement may be renewed for a maximum of two (2) additional one (1) year terms, upon mutual agreement from both parties.

**City of Flagstaff**

**Provider**

\_\_\_\_\_  
Kevin Burke, City Manager

\_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Date of Execution: \_\_\_\_\_



**EXHIBIT A**

CITY OF FLAGSTAFF  
2014-31 MATERIALS TESTING SERVICES

TYPE OF TEST	ESTIMATED TOTAL NUMBER OF TESTS FOR CITY	UNIT COST OF TEST INCLUDING INCIDENTALS, OVERHEAD & PROFIT	TOTAL ESTIMATED COST
DENSITY - SOIL	2538	25	63450
DENSITY - AC	532	30	15960
PROCTOR	33	95	3135
GRADATION - SOILS	3	60	180
GRADATION - MA	30	60	1800
GRADATION - CHIPS	6	60	360
PLASTIC INDEX	40	55	2200
CYLINDERS	898	15	13470
CONCRETE BREAKS	874	15	13110
AIR CONTENT	173	15	2595
SLUMP	180	15	2700
AC CONTENT	73	75	5475
AC GRADATION	73	30	2190
AC MOISTURE	73	15	1095
MARSHAL PLUGS	136	95	12920
STABILITY & FLOW	142	95	13490
RICE	39	60	2340
AIR VOIDS	38	15	570
LA ABRASION	5	130	650
SAND EQUIVALENT	70	75	5250
TOTAL ESTIMATED ANNUAL TESTING AMOUNT			\$162,940

- CONTINGENCY ALLOWANCE \$10,000.00
- STANDBY TIME (IF REQUIRED) \$62.00 / HOUR  
SENIOR TECHNICIAN
- OVERTIME (IF REQUIRED) STRAIGHT TIME x 1.35

## EXHIBIT B

### SCOPE OF SERVICES

The City of Flagstaff (the "City") invites interested professionals to submit a written Statement of Qualifications (SOQ) for performing annual construction materials testing services for infrastructure improvements in and for the City of Flagstaff, Arizona. The contract would be for a minimum term of three years. Within the three-year term, the contract shall be subject to annual renewals contingent upon successful performance reviews, generally based upon the quality, technical accuracy, timely completion and coordination of all services provided under this contract.

Firms must submit a SOQ that clearly demonstrates the firm's applicable competence, qualifications and relevant experience with construction materials and testing including being able to demonstrate adequate resources for delivery of the required services.

The scope of services required is consistent with the City of Flagstaff Agreement for Materials Testing Services contract, which is attached as a reference document and will be posted on the City of Flagstaff website along with the RSOQ as a related document.

Additional conditions and services will generally include, but may not be limited to,

1. Equipment and Laboratory Criteria
  - a. Provision of a laboratory facility located in Flagstaff. A physical facility is preferred however, a mobile laboratory suited for all necessary testing may be considered.
  - b. All laboratory equipment shall be calibrated annually. Verification of calibration is required. Ongoing maintenance of equipment is required. The City reserves the right to inspect laboratory facilities at any time.
  - c. Nuclear densometers are required for determining field density, moisture content and oil content and shall be stored and operated at all times in strict adherence to Arizona radiation regulatory agency requirements.
2. Personnel Qualifications and Personnel Performance Criteria
  - a. City desires that field personnel have ACI certification, NICET and/or ATTI certifications.
  - b. Ability to maintain strict adherence to industry accepted testing procedures and requirements when conducting and reporting test results.
  - c. Field personnel are required to meet a one-hour maximum response time between various project locations.
  - d. Ability to perform critical tests and sampling for asphalt (e.g. Marshall plug, oil content, gradation, stability/flow and voids) and to report lab results to the assigned City Inspector within four (4) hours of taking the sample.
  - e. Ability to perform critical tests and sampling for soils and aggregate base course (e.g. proctor, sieve, plasticity index and gradation) following initial testing and to report lab results to the assigned City Inspector within four (4) hours of taking the sample.
  - f. Field personnel shall demonstrate having received safety training, competency in confined space entry, flagging and traffic control, trench excavations and general work zone safety
  - g. Materials testing field personnel shall be able to demonstrate the ability to ;
    - i. accept direction from the City's Construction Manager
    - ii. function as a team member
    - iii. provide excellent customer service in all situations that arise on a construction site
    - iv. perform their duties as an extension of City staff

- v. accept direction from City Inspectors as to frequency and location of tests and how to report failing tests to our customers
- vi. read construction plans and specifications
- vii. identify issues and to communicate their concerns to the City Inspector

3. Firms' Criteria

- a. All laboratory materials testing shall be conducted under the direct supervision of a Professional Engineer registered in the State of Arizona.
- b. Demonstrate that staff is skilled, knowledgeable and well trained in materials testing processes and protocols.
- c. Firms providing information in response to this RSOQ must be able to maintain a fully integrated training and quality control program, independently from the City.
- d. Materials testing services as provided by the private sector shall be a seamless extension of City staff performing quality assurance services on all projects permitted in the City right-of-way. These material testing services are not to be considered quality control services performed on behalf of the permitted contractor.
- e. Firm shall demonstrate their ability to perform testing accurately with attention to detail in both the laboratory and in the field.
- f. A minimum of two (2) materials testing field personnel shall be provided, solely dedicated to City projects from April 15 to December 15. The personnel shall be available to respond on an as need basis with a twenty-four (24) hour notice from December 15 through April 15.
- g. Firm must demonstrate the ability to adjust staffing level to accommodate fluctuations in workloads.
  - i. Regular attendance is a mandatory requirement of the service provided. Staff must be able to work weekends, holidays and night shifts.
- h. Demonstrate that field personnel have adequate construction site transportation, cell phones, necessary field testing equipment and safety clothing.
- i. Maintain accurate and complete records and reports
  - i. Submittal of test results to the City on a weekly basis