



## POST ACTION AGENDA NOTICE

### NOTICE OF THE REGULAR SESSION OF THE FOUNTAIN HILLS TOWN COUNCIL

**Mayor Linda M. Kavanagh**

**Councilmember Dennis Brown**

**Vice Mayor Nick DePorter**

**Councilmember Henry Leger**

**Councilmember Alan Magazine**

**Councilmember Art Tolis**

**Councilmember Cecil A. Yates**

**TIME: 6:00 P.M. - FOUNTAIN HILLS TOWN COUNCIL GROUP PHOTO  
TAKEN IN THE TOWN HALL COUNCIL CHAMBERS**

**6:30 P.M. – REGULAR SESSION**

**WHEN: THURSDAY, DECEMBER 1, 2016**

**WHERE: FOUNTAIN HILLS COUNCIL CHAMBERS  
16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, AZ**

Councilmembers of the Town of Fountain Hills will attend either in person or by telephone conference call; a quorum of the Town's various Commission, Committee or Board members may be in attendance at the Council meeting.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Town Council are audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

#### **PROCEDURE FOR ADDRESSING THE COUNCIL**

Anyone wishing to speak before the Council must fill out a speaker's card and submit it to the Town Clerk prior to Council discussion of that Agenda item. Speaker Cards are located in the Council Chamber Lobby and near the Clerk's position on the dais.

Speakers will be called in the order in which the speaker cards were received either by the Clerk or the Mayor. At that time, speakers should stand and approach the podium. Speakers are asked to state their name and whether or not they reside in Fountain Hills (*do not provide a home address*) prior to commenting and to direct their comments to the Presiding Officer and not to individual Councilmembers. Speakers' statements should not be repetitive. *If a speaker chooses not to speak when called, the speaker will be deemed to have waived his or her opportunity to speak on the matter. Speakers may not (i) reserve a portion of their time for a later time or (ii) transfer any portion of their time to another speaker.*

**If there is a Public Hearing, please submit the speaker card to speak to that issue during the Public Hearing.**

Individual speakers will be allowed **three** contiguous minutes to address the Council. Time limits may be waived by (i) *discretion of the Town Manager upon request by the speaker not less than 24 hours prior to a Meeting,* (ii) *consensus of the Council at Meeting* or (iii) *the Mayor either prior to or during a Meeting.* Please be respectful when making your comments. If you do not comply with these rules, you will be asked to leave.



2. **CONSIDERATION** of approving the FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT C2016-180 with Roadsafe Traffic Systems Inc, for the purchase of temporary traffic control in the amount not to exceed \$20,000.00.
3. **CONSIDERATION** of CONFIRMING TOWN COUNCIL SUB-COMMITTEE MEMBER APPOINTMENTS FOR THE BALANCE OF FY2016/17 AND FY2017/18, as proposed by the Mayor Kavanagh, for the purpose of interviewing and recommending applicants to the Mayor to serve on the Town's boards and commissions:
  - (i) **Community Services Advisory Commission** – Vice Mayor Nick DePorter, Councilmembers Alan Magazine and Cecil Yates;
  - (ii) **McDowell Mountain Preservation Commission** – Councilmembers Dennis Brown, Art Tolis, and Cecil Yates;
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  - (iv) **Strategic Planning Advisory Commission** – Vice Mayor Nick DePorter, Councilmembers Henry Leger and Art Tolis;
  - (v) **Board of Adjustment** – Councilmembers Dennis Brown, Henry Leger and Alan Magazine;
  - (vi) **Sisters Cities Advisory Commission** – Vice Mayor Nick DePorter, Councilmembers Henry Leger and Alan Magazine; and
  - (vii) **Building Safety Board of Appeals** – Councilmembers Dennis Brown, Cecil Yates and Art Tolis.
4. **CONSIDERATION** of approving a FAIR/FESTIVAL LIQUOR LICENSE APPLICATION for the International Cancer Advocacy Network (Marcia Horn) for the promotion of a fund raiser to be held on Avenue of the Fountains, in conjunction with the Fountain Hills Sculpture and Wine Experience, from 10:00 AM to 5:00 PM, Friday, January 13, 2017, through Sunday, January 15, 2017.
5. **CONSIDERATION** of RESOLUTION 2016-39, approving the Amendment One to the Intergovernmental Agreement with the County of Maricopa relating to the maintenance, improvement and management of outdoor recreation opportunities in the Town's McDowell Mountain Preserve and the County's McDowell Mountain Regional Park and ratifying the Town Manager's execution of the Amendment.
6. **CONSIDERATION** of Ordinance 16-12, amending the Town of Fountain Hills Town Code, Chapter 9, Article 9-4, Section 9-4-3, Rules and Regulations at Town Owned Parks.

## REGULAR AGENDA

7. **DISCUSSION WITH POSSIBLE DIRECTION TO STAFF** regarding proposed Town of Fountain Hills Noise Regulations. **NO ACTION TAKEN**
  
8. **CONSIDERATION** of approving COOPERATIVE PURCHASE AGREEMENT C2017-071 with Infrastructure Asset Management, LLC in the amount of \$106,245.00 for pavement performance data collection and reporting. **DENIED**
  
9. **CONSIDERATION** of RESOLUTION 2016-37, declaring as a public record that certain document filed with the Town Clerk and entitled “Amendments to Town Code Chapter 3, Article 3, Procurement, dated December 1, 2016. **APPROVED**
  
10. **CONSIDERATION** of ORDINANCE 16-13, adopting the “Amendments to Town Code Chapter 3, Article 3, Procurement, dated December 1, 2016” by reference and amending the Town of Fountain Hills Town Code, Chapter 3, Article 3, by revising provisions related to procurement. **APPROVED**
  
11. **CONSIDERATION** of RESOLUTION 2016-36, adopting the Town of Fountain Hills Procurement Policy dated December 1, 2016. **APPROVED**
  
12. **COUNCIL DISCUSSION/DIRECTION** to the Town Manager.  
Item(s) listed below are related only to the propriety of (i) placing such item(s) on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council:  
*i.) None.*
  
13. **SUMMARY OF COUNCIL REQUESTS** and **REPORT ON RECENT ACTIVITIES** by the Mayor, Individual Councilmembers, and the Town Manager.
  
14. **ADJOURNMENT. 9:04 PM**

**DATED** this 23<sup>rd</sup> day of November, 2016.



Nancy Walter, Acting Town Clerk

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 480-816-5100 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting or to obtain agenda information in large print format. *Supporting documentation and staff reports furnished the Council with this agenda are available for review in the Clerk's office.*



**NOTICE OF THE  
REGULAR SESSION OF THE  
FOUNTAIN HILLS TOWN COUNCIL**

**Mayor Linda M. Kavanagh**

**Councilmember Dennis Brown**  
**Vice Mayor Nick DePorter**  
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## **REGULAR SESSION AGENDA**

- **CALL TO ORDER AND PLEDGE OF ALLEGIANCE** – Mayor Linda M. Kavanagh
- **INVOCATION** – Moment of Silence
- **ADMINISTRATION of “Ceremonial Oaths of Office” to newly elected officials by Presiding Judge Robert Melton:**
  - Linda M. Kavanagh – Mayor
  - Dennis Brown – Councilmember
  - Art Tolis – Councilmember
  - Cecil Yates- Councilmember
- **ROLL CALL** – Mayor Linda M. Kavanagh
- **MAYOR’S REPORT**
  - i) None.
- **SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS**
  - i) The Mayor and/or Council may review RECENT EVENTS attended relating to Economic Development.
  - ii) PRESENTATION of the Republic Services Community Grant by Operations Manager Jeff Fanelli and General Manager Tricia Ponce De Leon
  - iii) RECOGNITION of the Fountain Hills High School 2016 Girl’s 3A State Volleyball Champions.
  - iv) RECOGNITION of the members in the inaugural class of the Leadership Academy.

## **CALL TO THE PUBLIC**

Pursuant to A.R.S. §38-431-01(H), public comment is permitted (not required) on matters not listed on the agenda. Any such comment (i) must be within the jurisdiction of the Council and (ii) is subject to reasonable time, place, and manner restrictions. The Council will not discuss or take legal action on matters raised during “Call to the Public” unless the matters are properly noticed for discussion and legal action. At the conclusion of the call to the public, individual Councilmembers may (i) respond to criticism, (ii) ask staff to review a matter or (iii) ask that the matter be placed on a future Council agenda.

## **CONSENT AGENDA ITEMS**

All items listed on the Consent Agenda are considered to be routine, non-controversial matters and will be enacted by one motion and one roll call vote of the Council. All motions and subsequent approvals of consent items will include all recommended staff stipulations unless otherwise stated. There will be no separate discussion of these items unless a Councilmember or member of the public so requests. If a Councilmember or member of the public wishes to discuss an item on the consent agenda, he/she may request so prior to the motion to accept the Consent Agenda or with notification to the Town Manager or Mayor prior to the date of the meeting for which the item was scheduled. The items will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

1. **CONSIDERATION** of approving the TOWN COUNCIL MEETING MINUTES from November 9, 2016.

2. **CONSIDERATION** of approving the FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT C2016-180 with Roadsafe Traffic Systems Inc, for the purchase of temporary traffic control in the amount not to exceed \$20,000.00.
3. **CONSIDERATION** of CONFIRMING TOWN COUNCIL SUB-COMMITTEE MEMBER APPOINTMENTS FOR THE BALANCE OF FY2016/17 AND FY2017/18, as proposed by the Mayor Kavanagh, for the purpose of interviewing and recommending applicants to the Mayor to serve on the Town's boards and commissions:
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# TOWN OF FOUNTAIN HILLS TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Consent

**Submitting Department:** Administration

**Staff Contact Information:** Bevelyn J. Bender, Town Clerk; 480-816-5115; bbender@fh.az.gov

**Council Goal:**

**Strategic Values:** Civic Responsibility

C3 Solicit feedback in decision-making

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**REQUEST TO COUNCIL** (Agenda Language): CONSIDERATION of approving the TOWN COUNCIL MEETING MINUTES from November 9, 2016.

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**Applicant:** NA

**Applicant Contact Information:**

**Property Location:**

**Related Ordinance, Policy or Guiding Principle:** A.R.S. §38-431.01

**Staff Summary** (background): The intent of approving previous meeting minutes is to ensure an accurate account of the discussion and action that took place at that meeting for archival purposes. Approved minutes are placed on the Town's website in compliance with state law.

**Risk Analysis** (options or alternatives with implications):

**Fiscal Impact** (initial and ongoing costs; budget status):

**Budget Reference** (page number):

**Funding Source:** NA

If Multiple Funds utilized, list here:

**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):**

**Staff Recommendation(s):** Approve

**List Attachment(s):** None

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**SUGGESTED MOTION** (for Council use): Move to approve the consent agenda as listed

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**Prepared by:**

*Bevelyn J. Bender*

Bevelyn Bender, Town Clerk

11/16/2016

**Approved:**

*Grady E. Miller*

Grady E. Miller, Town Manager

11/22/2016



# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Consent

**Submitting Department:** Public Works

**Staff Contact Information:** Justin T. Weldy, Street Superintendent, [jweldy@fh.az.gov](mailto:jweldy@fh.az.gov)

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Not Applicable (NA)

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**REQUEST TO COUNCIL** (Agenda Language): Consideration of approving the first amendment to Cooperative Purchase Agreement C2016-180.1 with Roadsafe Traffic Systems for temporary traffic control in the amount not to exceed \$20,000.00

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**Applicant:** NA

**Applicant Contact Information:** NA

**Owner:** NA

**Owner Contact Information:** NA

**Property Location:** NA

**Related Ordinance, Policy or Guiding Principle:** NA

**Staff Summary** (background): The Town's primary use of temporary traffic control devices (barricades) is to have available the equipment and resources necessary to control traffic in the event of a prolonged traffic signal outage, Town construction projects and Town sponsored special events. This Contract amendment will provide the services necessary to assist staff with implementing these safety measures.

**Risk Analysis** (options or alternatives with implications): NA

**Fiscal Impact** (initial and ongoing costs; budget status): \$29,000.00. First amendment - 20,000.00. For a total of 49,000.00

**Budget Reference** (page number): 276

**Funding Source:** Hurf Fund

If Multiple Funds utilized, list here: NA

**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):** NA

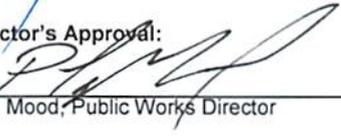
**Staff Recommendation(s):** Staff recommends approval of the proposed amendment to the cooperative purchasing agreement

**List Attachment(s):** First amendment to Cooperative Purchasing Agreement C2016-180.1

**SUGGESTED MOTION** (for Council use): Motion to approve the first amendment to Cooperative Purchase Agreement C2016-180.1 with Roadsafe Traffic Systems in the amount not to exceed \$20,000.00

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Prepared by:   
Justin Weldy, Superintendent of Streets 8/30/2016

Director's Approval:   
Paul Mood, Public Works Director 8/30/2016

Approved:   
Grady E. Miller, Town Manager 9/6/2016

**FIRST AMENDMENT  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
ROADSAFE TRAFFIC SYSTEMS, INC.**

THIS FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this “First Amendment”) is entered into as of December 1, 2016, between the Town of Fountain Hills, an Arizona municipal corporation (the “Town”), and Roadsafe Traffic Systems, Inc., a Delaware corporation (the “Contractor”).

RECITALS

A. After a competitive procurement process, Maricopa County, Arizona (the “County”) entered into Contract No. 11087-S, dated November 2, 2011, and amended on November 20, 2014, with the Contractor for the Contractor to provide temporary traffic control services (collectively, the “County Contract”).

B. The Town and the Contractor entered into a Cooperative Purchasing Agreement dated September 9, 2015 (the “Agreement”), based upon the County Contract, for the Contractor to provide the Town with temporary traffic control services (the “Materials and Services”). All capitalized terms not otherwise defined in this First Amendment have the same meanings as contained in the Agreement.

C. The Town has determined that additional Materials and Services by the Contractor are necessary (the “Additional Materials and Services”).

D. The Town and the Contractor desire to enter into this First Amendment to (i) extend the term of the Agreement and (ii) provide for the increase in compensation to the Contractor for the Additional Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of the Agreement. The term of the Agreement is hereby extended and shall remain in full force and effect until November 30, 2017, unless terminated as otherwise provided pursuant to the terms and conditions of the Agreement.

2. Compensation. The Town shall increase the compensation to Contractor by \$20,000.00 for the Additional Materials and Services at the rates set forth in the County

Contract, resulting in an increase of the aggregate not-to-exceed compensation from \$29,000.00 to \$49,000.00.

3. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. Non-Default. By executing this First Amendment, the Contractor affirmatively asserts that (i) the Town is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

5. Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

6. Conflict of Interest. This First Amendment and the Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

**“Town”**

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

\_\_\_\_\_  
Grady E. Miller, Town Manager

ATTEST:

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2016, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

\_\_\_\_\_  
Notary Public

(Affix notary seal here)





# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 12/1/2016

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Administration

Staff Contact Information: Town Manager Grady E. Miller; gmiller@fh.az.gov; 480-816-5107

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**REQUEST TO COUNCIL** (Agenda Language): **CONSIDERATION** of CONFIRMING TOWN COUNCIL SUB-COMMITTEE MEMBER APPOINTMENTS FOR THE BALANCE OF FY2016/17 AND FY2017/18, as proposed by the Mayor Kavanagh, for the purpose of interviewing and recommending applicants to the Mayor to serve on the Town's boards and commissions:

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- (vii) **Building Safety Board of Appeals** – Councilmembers Dennis Brown, Cecil Yates and Art Tolis.

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**Applicant:** N/A

**Applicant Contact Information:** N/A

**Property Location:** N/A

**Related Ordinance, Policy or Guiding Principle:** Council Rules of Procedure

**Staff Summary** (background):

Mayor Linda M. Kavanagh has designated THE BALANCE OF FY2016/17 AND FY2017/18 Town Council Subcommittees for the purpose of interviewing and recommending applicants to the Mayor for consideration of appointment to Town Boards and Commissions with Council ratification pursuant to Council Rules of Procedure. The Town Council is being asked to confirm the Subcommittees as noted.

**Risk Analysis** (options or alternatives with implications): N/A

**Fiscal Impact** (initial and ongoing costs; budget status): N/A

**Budget Reference** (page number): N/A

**Funding Source:** NA

If Multiple Funds utilized, list here: N/A

**Budgeted; if No, attach Budget Adjustment Form:** NA

Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s):

List Attachment(s): N/A

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**SUGGESTED MOTION** (for Council use):

Move to approve the consent agenda.

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Approved:



Grady E. Miller, Town Manager

11/22/2016



# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Consent

**Submitting Department:** Community Services

**Staff Contact Information:** Rachael Goodwin, Recreation and Tourism Supervisor, 480-816-5135

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Not Applicable (NA)

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**REQUEST TO COUNCIL** (Agenda Language): CONSIDERATION of approving a FAIR/FESTIVAL LIQUOR LICENSE APPLICATION for the International Cancer Advocacy Network (Marcia Horn) for the promotion of a fund raiser to be held on Avenue of the Fountains, in conjunction with the Fountain Hills Sculpture and Wine Experience, from 10:00am to 5:00 pm, Friday, January 13 thru Sunday, January 15, 2017.

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**Applicant:** Marcia Horn

**Applicant Contact Information:** 602-618-0183, 27 W. Morten Ave, Phoenix, AZ 85021

**Property Location:** Avenue of the Fountains, Fountain Hills, Arizona

**Related Ordinance, Policy or Guiding Principle:** A.R.S. §4-203.02; 4-244; 4-261 and R19-1-228, R19-1-235, and R19-1-309

**Staff Summary** (background): The purpose of this item is to obtain Council's approval regarding the Fair/Festival liquor license application submitted by Marcia Horn with the International Cancer Advocacy Network, in conjunction with the Fountain Hills Sculpture and Wine Experience by the Thunderbird Artists, for submission to the Arizona Department of Liquor. The special event liquor license application was reviewed by staff for compliance with Town ordinances and staff unanimously recommends approval of this special event liquor license application as submitted.

**Risk Analysis** (options or alternatives with implications): N/A

**Fiscal Impact** (initial and ongoing costs; budget status): N/A

**Budget Reference** (page number): N/A

**Funding Source:** NA

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**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):** N/A

**Staff Recommendation(s):** Approve

**List Attachment(s):** Applications

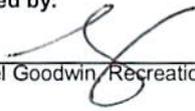
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**SUGGESTED MOTION** (for Council use): Move to approve the Special Event Liquor License as presented.

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Prepared by:

  
Rachael Goodwin, Recreation Supervisor 11/22/2016

Director's Approval:

  
Mark Mayer, Community Services Director 11/22/2016

Approved:

  
Grady Miller, Town Manager 11/22/2016

**TOWN OF FOUNTAIN HILLS  
ADMINISTRATION DEPARTMENT  
INTER OFFICE MEMO**

<b>TO:</b>	<i>(as applicable)</i> <ul style="list-style-type: none"> <li>• Streets Division</li> <li>• Fire Department</li> <li>• Building Division</li> <li>• Community Services</li> <li>• Development Services</li> <li>• Law Enforcement</li> <li>• Licensing</li> </ul>	<b>DATE:</b>	11/10/16
<b>FR:</b>	Rachael Goodwin, Recreation Supervisor	<b>RE:</b>	Liquor License Application

Attached is a Liquor License Application for staff review.

Review the application, then sign, indicating staff's recommendation for approval (with or without stipulations) or denial.

If staff's recommendation is to deny and/or there are stipulations for approval, please attach a memo that specifies the reasoning and the memo will be forwarded on to the Town Council for their consideration of this application.

**Name of Organization:** International Cancer Advocacy Network (ICAN)

**Applicant:** Marcia Horn

**Date(s) of Event:** Jan 13-15, 2017 at Saguaro Blvd, in conjunction with the Thunderbird Artist Sculpture Show

**Date Application Received:** 10/26/16    **Town Council Agenda Date:** 12/1/16

**STAFF REVIEW AND RECOMMENDATION:**

Department/Division	Staff Member	Approved	Denied	N/A
Building Safety	Jason Field			X
Community Services	Rachael Goodwin	X		
Development Services	Bob Rodgers	✓		
Fire Department	Jason Payne	✓		
Law Enforcement	Mark Fisher	✓ [Signature]		
Licensing	<b>Sonia Kukkola</b>			X
Street Department	Justin Weldy	↓		

***Attach report for denial or any recommendation requiring stipulations.***

16705 E. Avenue of the Fountains  
Fountain Hills, AZ 85268  
(480) 816-5100

=====

SPECIAL EVENT Liquor App Fee - \$25	
	25.00 25.00

Event Name: INTERNATIONAL CANCER  
ADVOCACY NETWORK

Applicant Name: MARCIA HORN

Event Date(s): 1/13 - 1/15 2017

=====

SubTotal:	25.00
Total:	25.00

=====

Check	25.00
Number : 2128	

10/26/2016 03:52

#0116345 /13/10

Receipt #: 156418

\*\*\*\*\* DUPLICATE #001 \*\*\*\*\*

10/26/2016 03:53

Town of Fountain Hills



Arizona Department of Liquor Licenses and Control  
 800 W Washington 5th Floor  
 Phoenix, AZ 85007-2934  
 www.azliquor.gov  
 (602) 542-5141

FOR DLIC USE ONLY

Event Date(s):
Event time start/end:
CSR:
License:

**APPLICATION FOR SPECIAL EVENT LICENSE**  
 Fee= \$25.00 per day for 1-10 days (consecutive)  
 Cash Checks or Money Orders Only

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

**IMPORTANT INFORMATION: This document must be fully completed or it will be returned.**

The Department of Liquor Licenses and Control must receive this application ten (10) business days prior to the event. If the special event will be held at a location without a permanent liquor license or if the event will be on any portion of a location that is not covered by the existing liquor license, this application must be approved by the local government before submission to the Department of Liquor Licenses and Control (see Section 15).

**SECTION 1** Name of Organization: ICAN, International Cancer Advocacy Network

**SECTION 2** Non-Profit/IRS Tax Exempt Number: 86-0818253

**SECTION 3** The organization is a: (check one box only)

- Charitable  Fraternal (must have regular membership and have been in existence for over five (5) years)
- Religious  Civic (Rotary, College Scholarship)  Political Party, Ballot Measure or Campaign Committee

**SECTION 4** Will this event be held on a currently licensed premise and within the already approved premises?  Yes  No

\_\_\_\_\_  
 Name of Business License Number Phone (include Area Code)

**SECTION 5** How is this special event going to conduct all dispensing, serving, and selling of spirituous liquors? Please read R-19-318 for explanation (look in special event planning guide) and check one of the following boxes.

- Place license in non-use
- Dispense and serve all spirituous liquors under retailer's license
- Dispense and serve all spirituous liquors under special event
- Split premise between special event and retail location

(IF NOT USING RETAIL LICENSE, SUBMIT A LETTER OF AGREEMENT FROM THE AGENT/OWNER OF THE LICENSED PREMISE TO SUSPEND THE LICENSE DURING THE EVENT. IF THE SPECIAL EVENT IS ONLY USING A PORTION OF PREMISE, AGENT/OWNER WILL NEED TO SUSPEND THAT PORTION OF THE PREMISE.)

**SECTION 6** What is the purpose of this event?  On-site consumption  Off-site (auction)  Both

**SECTION 7** Location of the Event: 16810 E Avenue of the Fountains, Fountain Hills  
 Address of Location: On Avenue of the Fountains, between LA Montana & Saguaro Blvd.  
Street City COUNTY State Zip

**SECTION 8** Will this be stacked with a wine festival/craft distiller festival?  Yes  No

**SECTION 9** Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Section 1. (Authorizing signature is required in Section 13.)

1. Applicant: Hoer Marcia Karen  
Last First Middle Date of Birth

2. Applicant's mailing address: REDACT  
City State Zip

3. Applicant's home/cell phone: REDACT Applicant's business phone: ( ) Same

4. Applicant's email address: marcia@astican.org

**SECTION 10**

1. Has the applicant been convicted of a felony, or had a liquor license revoked within the last five (5) years?  
 Yes  No (If yes, attach explanation.)

2. How many special event licenses have been issued to this location this year? ~~110~~ ~~110~~ 3  
 (The number cannot exceed 12 events per year; exceptions under A.R.S. §4-203.02(D).)

3. Is the organization using the services of a promoter or other person to manage the event?  Yes  No  
 (If yes, attach a copy of the agreement.)

4. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds. The organization applying must receive 25% of the gross revenues of the special event liquor sales. Attach an additional page if necessary.

Name Thunderbird Artists, Inc. Percentage: 75%

Address **REDACT**

Name ICAN, International Cancer Advocacy Percentage: 25%

Address **REDACT**

5. Please read A.R.S. § 4-203.02 Special event license; rules and R19-1-205 Requirements for a Special Event License.

**Note: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.**  
**"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT UNLESS THEY ARE IN AUCTION SEALED CONTAINERS OR THE SPECIAL EVENT LICENSE IS STACKED WITH WINE /CRAFT DISTILLERY FESTIVAL LICENSE"**

6. What type of security and control measures will you take to prevent violations of liquor laws at this event?  
 (List type and number of police/security personnel and type of fencing or control barriers, if applicable.)

3 Number of Police 8 Number of Security Personnel  Fencing  Barriers

Explanation: 24 hour Security  
Private Security  
Maricopa County Sheriff Deputies

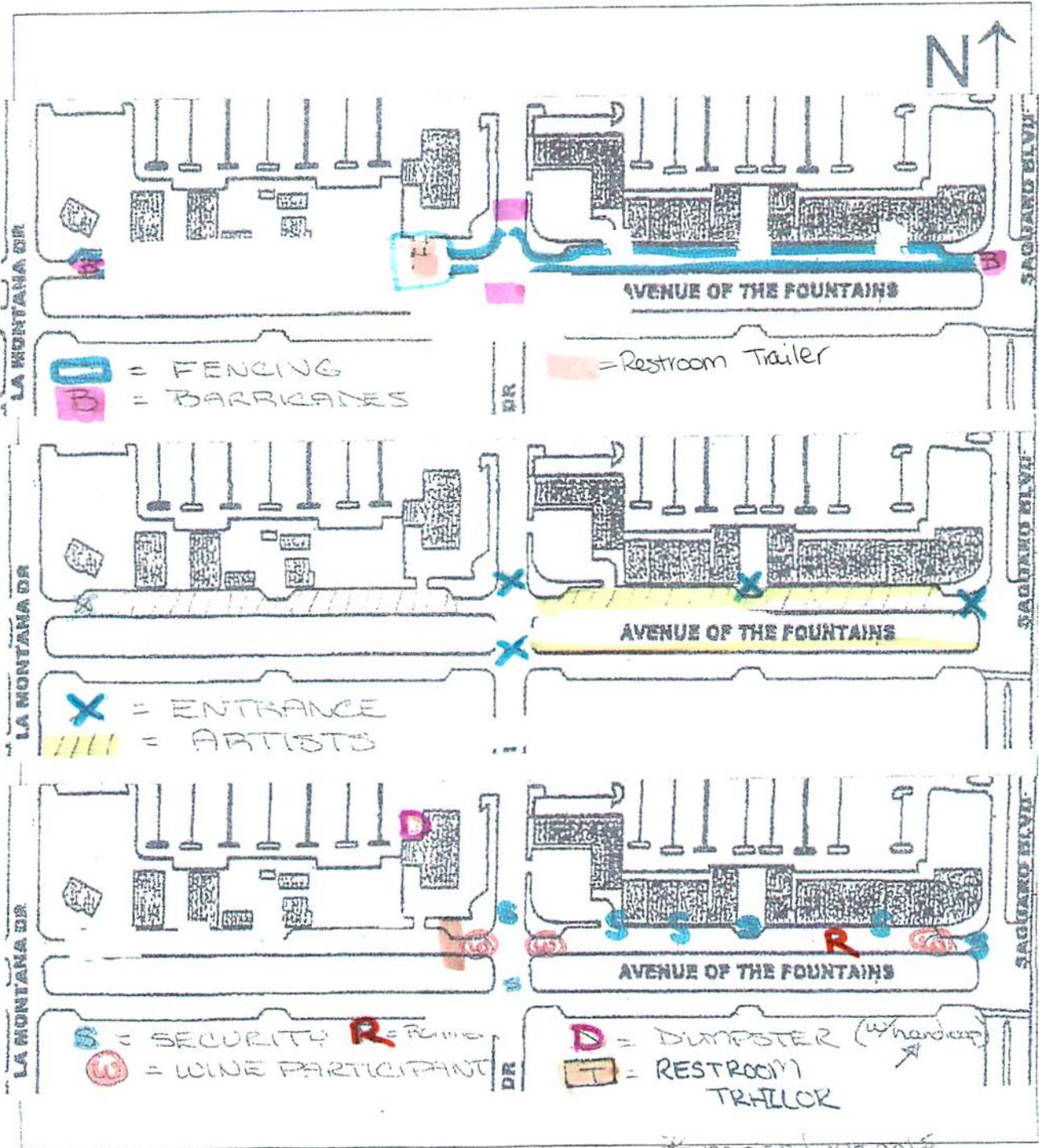
**SECTION 11** Dates and Hours of Event. Days must be consecutive but may not exceed 10 consecutive days.  
 See A.R.S. § 4-244(15) and (17) for legal hours of service.

**PLEASE FILL OUT A SEPARATE APPLICATION FOR EACH "NON-CONSECUTIVE" DAY**

	Date	Day of Week	Event Start Time AM/PM	License End Time AM/PM
DAY 1:	<u>1/13/20<del>16</del><sup>17</sup></u>	<u>Friday</u>	<u>10 AM</u>	<u>5 PM</u>
DAY 2:	<u>1/14/20<del>16</del><sup>17</sup></u>	<u>Saturday</u>	<u>10 AM</u>	<u>5 PM</u>
DAY 3:	<u>1/15/20<del>16</del><sup>17</sup></u>	<u>Sunday</u>	<u>10 AM</u>	<u>5 PM</u>
DAY 4:				
DAY 5:				
DAY 6:				
DAY 7:				
DAY 8:				
DAY 9:				
DAY 10:				

**SPECIAL EVENT LICENSED PREMISES DIAGRAM**  
 (This diagram must be completed with this application)

Special Event Diagram: (Show dimensions, serving areas, and label type of enclosure and security positions)  
 NOTE: Show nearest cross streets, highway, or road if location doesn't have an address.



\* more upscale restrooms \*

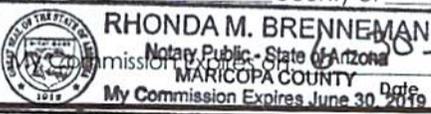
**SECTION 13** To be completed only by an Officer, Director or Chairperson of the organization named in Section 1.

I, (Print Full Name) Marcia K. Horn declare that I am an Officer, Director or Chairperson of the organization filing this application as listed in Section 9. I have read the application and the contents and all statements are true, correct and complete.

X Marcia K. Horn Signature Title/ Position CEO Date 11/07/16 Phone Number **REDACT**

The foregoing instrument was acknowledged before me this 7 Day November Month 2016 Year

State Arizona County of Maricopa

 Rhonda M. Brenneman Signature of Notary Public

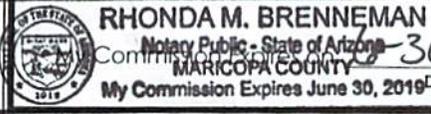
**SECTION 14** This section is to be completed only by the applicant named in Section 9.

I, (Print Full Name) Marcia K. Horn declare that I am the APPLICANT filing this application as listed in Section 9. I have read the application and the contents and all statements are true, correct and complete.

X Marcia K. Horn Signature Title/ Position CEO Date 11/07/16 Phone Number **REDACT**

The foregoing instrument was acknowledged before me this 7 Day November Month 2016 Year

State Arizona County of Maricopa

 Rhonda M. Brenneman Signature of Notary Public

Please contact the local governing board for additional application requirements and submission deadlines. Additional licensing fees may also be required before approval may be granted. For more information, please contact your local jurisdiction: [http://www.azliquor.gov/assets/documents/homepage\\_docs/spec\\_event\\_links.pdf](http://www.azliquor.gov/assets/documents/homepage_docs/spec_event_links.pdf).

**SECTION 15** Local Governing Body Approval Section.

I, \_\_\_\_\_ recommend  APPROVAL  DISAPPROVAL  
 (Government Official) (Title)

On behalf of \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone \_\_\_\_\_  
 (City, Town, County)

**SECTION 16** For Department of Liquor Licenses and Control use only.

APPROVAL  DISAPPROVAL BY: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

**A.R.S. § 41-1030. Invalidity of rules not made according to this chapter, prohibited agency action; prohibited acts by state employees; enforcement; notice**

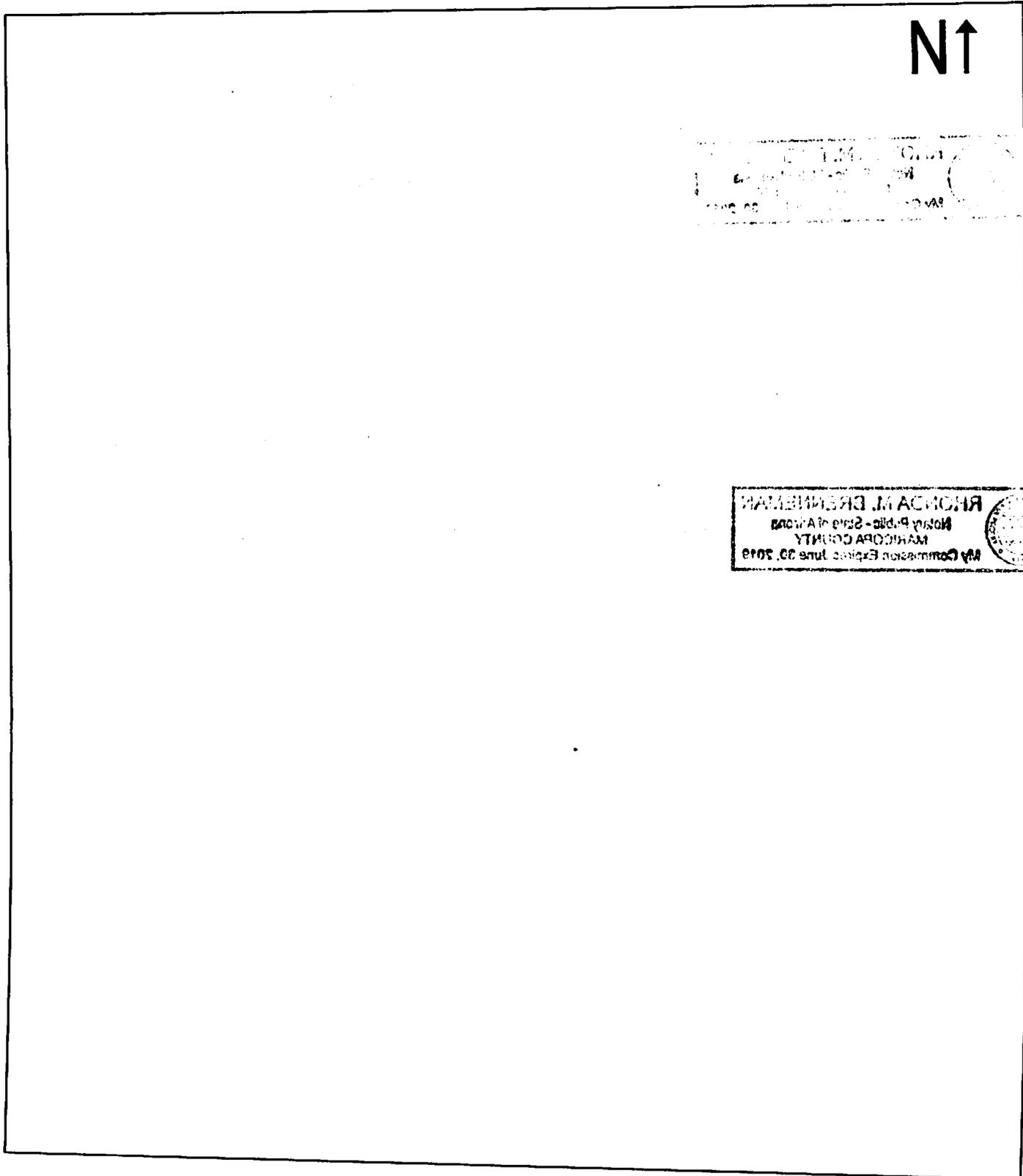
B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE. THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.

E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.

F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.

**SECTION 12** License premises diagram. The licensed premises for your special event is the area in which you are authorized to sell, dispense or serve alcoholic beverages under the provisions of your license. The following space is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades, or other control measures and security position.





# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Consent

**Submitting Department:** Community Services

**Staff Contact Information:** Mark Mayer, Director of Community Services - mmayer@fh.az.gov

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Not Applicable (NA)

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**REQUEST TO COUNCIL** (Agenda Language): Consideration of Resolution 2016-39, approving the Amendment One to the Intergovernmental Agreement with the County of Maricopa relating to the maintenance, improvement and management of outdoor recreation opportunities in the Town's McDowell Mountain Preserve and the County's McDowell Mountain Regional Park and ratifying the Town Manager's execution of the Amendment.

---

**Applicant:**

**Applicant Contact Information:**

**Owner:**

**Owner Contact Information:**

**Property Location:**

**Related Ordinance, Policy or Guiding Principle:**

**Staff Summary** (background): At the November 17, 2016 meeting Council approved the extension of the IGA with the County. Amendment One was submitted to the Town too late to have included in the packet that evening but the Council did approve the extension as proposed for an additional five years. This will take the agreement thru December 15, 2021. A second extension is also allowed in the future, which would extend the agreement an additional five years to 2026.

The attached Amendment One to the IGA will simply ratify the action taken at the November 17, 2016. This Amendment One has been signed by the Town Manager and forwarded to the County for their consideration.

**Risk Analysis** (options or alternatives with implications):

**Fiscal Impact** (initial and ongoing costs; budget status):

**Budget Reference** (page number):

**Funding Source:** NA

If Multiple Funds utilized, list here:

**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):**

**Staff Recommendation(s):**

**List Attachment(s):** Amendment One of the Intergovernmental Agreement with Maricopa County Parks and Recreation Department and Resolution 2016-39.

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**SUGGESTED MOTION** (for Council use): Approve Resolution 2016-39, approving the Amendment One to the Intergovernmental Agreement with the County of Maricopa relating to the maintenance, improvement and management of outdoor recreation opportunities in the Town's McDowell Mountain Preserve and the County's McDowell Mountain Regional Park and ratifying the Town Manager's execution of the Amendment.

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Prepared by:

\_\_\_\_\_  
NA 9/27/2016

Director's Approval:

  
\_\_\_\_\_  
Mark Mayer, Community Services Director 11/22/2016

Approved:

  
\_\_\_\_\_  
Grady E. Miller, Town Manager 11/23/2016

**RESOLUTION 2016-39**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING THE AMENDMENT ONE TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO THE MAINTENANCE, IMPROVEMENT AND MANAGEMENT OF OUTDOOR RECREATION OPPORTUNITIES IN THE MCDOWELL MOUNTAIN PRESERVE AND MCDOWELL MOUNTAIN REGIONAL PARK; AND RATIFYING THE TOWN MANAGER'S EXECUTION OF THE AMENDMENT ONE.

**WHEREAS**, the Town of Fountain Hills (the "Town") and Maricopa County, Arizona (the "County") entered into an Intergovernmental Agreement (the "Agreement") relating to the maintenance, improvement and management of outdoor recreation opportunities at the Town's McDowell Mountain Preserve and the County's McDowell Mountain Regional Park; and

**WHEREAS**, the term of the Agreement is set to expire on December 15, 2016 and the Town and the County desire to enter into the Amendment One, attached hereto as Exhibit A, and incorporated herein by reference (the "Amendment") to extend the term of the Agreement; and

**WHEREAS**, due to timing restrictions, the Town Manager executed the Amendment before receiving approval from the Town Council; and

**WHEREAS**, the Town Council desires to approve the Amendment and ratify the Town Manager's execution of the Amendment.

**NOW THEREFORE BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town Council hereby (i) approves the Amendment and (ii) ratifies the Town Manager's execution of the Amendment.

SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Amendment and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills,  
Arizona, December 1, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

---

Linda M. Kavanagh, Mayor

---

Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

---

Grady E. Miller, Town Manager

---

Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION 2016-39

[Amendment]

See following pages.

**AMENDMENT ONE**  
**INTERGOVERNMENTAL AGREEMENT**

**Between**

**MARICOPA COUNTY**

**And**

**THE TOWN OF FOUNTAIN HILLS, AZ**

**C-30-12-014-03-01**

**THIS AMENDMENT ONE** (hereinafter referred to as “Amendment One”), is made and entered into by and between Maricopa County, a political subdivision of the State of Arizona, (hereinafter called “County”), and the Town of Fountain Hills, an Arizona municipal corporation (hereinafter referred to as the “Town”), together hereinafter referred to as “Parties” or individually as a “Party.”

**RECITALS**

**WHEREAS**, the County and the Town are authorized to enter into this Amendment One pursuant to A.R.S. § 11-952; and

**WHEREAS**, the Parties entered into an Intergovernmental Agreement on December 15, 2011 (C-30-12-014-3-00), relating to the maintenance, improvement and management of outdoor recreation opportunities in the Town’s McDowell Mountain Preserve and the County’s McDowell Mountain Regional Park (the “Agreement”). The Agreement terminates on December 15, 2016, but may be extended for two additional five-year terms upon mutual agreement of the Parties; and

**WHEREAS**, the Parties now desire to enter into this Amendment One to exercise the first five-year extension, commencing upon the expiration of the current term (December 15, 2016) and continuing until December 15, 2021. The Parties further desire to preserve the ability to exercise one additional five-year term extension upon mutual agreement of both parties; and

**WHEREAS**, the Agreement, as modified by this Amendment One, will require administrative action from time to time to carry out the spirit and intent of the Agreement. Accordingly, the County desires to delegate to its Director for the Parks and Recreation Department the authority and responsibility for proper administration of the Agreement and this Amendment One, whether or not specific authority is granted in any provision of the Agreement and this Amendment One; and

**WHEREAS**, the County and the Town desire to enter into this Amendment One to the Agreement with the understanding that all other provisions of the Agreement shall remain in full force and effect.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the foregoing recitals, which are incorporated herein by reference, the promises and covenants set forth below, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to further amend the Agreement as follows:

### **I. DURATION**

The Parties hereby agree to extend the term of the Agreement until December 15, 2021.

### **II. NOTICES**

Section 14 – Notices and Requests is hereby deleted in its entirety and replaced with the following:

#### **14. NOTICES AND REQUESTS**

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:                   Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Grady E. Miller, Town Manager

With copy to:                   GUST ROSENFELD P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire

If to County:                   Maricopa County Parks and Recreation Department  
234 North Central Avenue, Suite 6400  
Phoenix, Arizona 85004  
Attn: Parks and Recreation Director

With copy to:                   Maricopa County Parks and Recreation Department  
41835 North Castle Hot Springs Road  
Morristown, Arizona 85342  
Attn: Contract Administrator

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery



IN ACCORDANCE WITH THE REQUIREMENTS OF ARIZONA REVISED STATUTES §§ 11-952(D), THE UNDERSIGNED ATTORNEYS ACKNOWLEDGE THAT (1) THEY HAVE REVIEWED THE ABOVE AGREEMENT ON BEHALF OF THEIR RESPECTIVE CLIENTS, AND (2) AS TO THEIR RESPECTIVE CLIENTS ONLY, EACH ATTORNEY HAS DETERMINED THAT THIS AGREEMENT IS IN PROPER FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA.

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Town Attorney



# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Regular

**Submitting Department:** Community Services

**Staff Contact Information:** Mark Mayer - mmayer@fh.az.gov

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Not Applicable (NA)

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**REQUEST TO COUNCIL** (Agenda Language): Consideration of Approving Ordinance 16-12 Amending Town Code. Chapter 9, Article 9-4, Section 9-4-3, Rules and Regulations at Town Owned Parks.

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**Applicant:**

**Applicant Contact Information:**

**Owner:**

**Owner Contact Information:**

**Property Location:**

**Related Ordinance, Policy or Guiding Principle:**

**Staff Summary** (background): Staff is proposing a number of changes to the existing Town Code specific to rules and regulations in the parks. There are two major changes being proposed. One of the changes was the result of recent action by the Legislature specific to unmanned aircraft, drones and rockets. The language proposed would bring us into compliance with the new state law. Another is the desire to close the current loophole in the Code that requires people walking dogs to have them on a leash. Unfortunately, people are simply letting their dogs drag the leash and not have control of the animal. Therefore, the proposed code change requires dogs to be on leashes held by their handlers.

**Risk Analysis** (options or alternatives with implications):

**Fiscal Impact** (initial and ongoing costs; budget status):

**Budget Reference** (page number):

**Funding Source:** NA

If Multiple Funds utilized, list here:

**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):** The Community Services Advisory Commission will review the new proposed language at their November 28, 2016 meeting.

**Staff Recommendation(s):** Staff is recommending approval.

**List Attachment(s):** Ordinance 16-12

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**SUGGESTED MOTION** (for Council use): Approve Ordinance 16-12.

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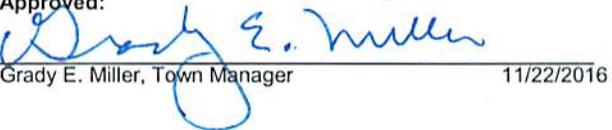
Prepared by:

NA \_\_\_\_\_ 9/27/2016

Director's Approval:

  
Mark Mayer, Community Services Director \_\_\_\_\_ 11/22/2016

Approved:

  
Grady E. Miller, Town Manager \_\_\_\_\_ 11/22/2016

## ORDINANCE 16-12

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS TOWN CODE, CHAPTER 9, ARTICLE 9-4, SECTION 9-4-3, RULES AND REGULATIONS AT TOWN OWNED PARKS.

**WHEREAS**, the Mayor and Council of the Town (the “Town Council”) desires to amend the Town Code and modify the Park Rules.

**NOW, THEREFORE, BE IT ORDAINED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town of Fountain Hills Town Code, Chapter 9 (Parks and Recreation), Article 9-4 (Park Rules and Regulations), Section 9-4-3 (Rules and Regulations at Town Owned Parks) is hereby amended to read as follows:

### **Section 9-4-3 Rules and Regulations at Town Owned Parks**

- A. All persons who use Town owned parks shall obey the following rules while on park property.
1. No open fires.
  2. No overnight camping.
  3. No firearms or weapons, except as authorized by Arizona law.
  4. No pets allowed, except WHEN on A leash THAT IS HELD IN THE HAND OF AN ADULT IN CONTROL OF THE PET. Animal waste shall be IMMEDIATELY removed by THE ADULT IN CONTROL OF THE PET ~~owner~~ in all Town park facilities. Activities within the off-leash recreational facility are exempt from the leash provision.
  5. No person shall operate skateboards, roller blades, inline skates, bicycles or any rolling (nonmotorized) vehicle in Town parks where such activity is specifically prohibited by appropriate posting or in an unsafe manner so as to infringe upon the safety of themselves or other park users. Activities within the bounded area of the skate park facility are exempt from this provision.
  6. The skate park facility, SPLASH PARK FACILITY and the off-leash recreational facility shall each be subject to their own unique and specific rules. Rules and regulations shall be visibly posTed at the skate park facility, and are subject to change by action of the director.

7. Park hours shall be visibly posted at each park.
8. No vehicles except in designated PARKING areas and IN NON-DESIGNATED PARKING AREAS PURSUANT TO A VALID PERMIT. Any vehicles left after 11:00 p.m. will be towed at the owner's expense.
9. No golfing or practicing of golf on grass areas.
10. No glass beverage containers.
11. NO UNAUTHORIZED VENDORS.
142. Model aircraft or unmanned aircraft and incendiary rockets are prohibited, except as provided in Section 9-4-4.
123. Lakes, fountains, and other waterways shall not be used for swimming, wading, bathing, fishing, or boating.
134. No person shall tether, launch or land a hot air balloon in a Town park except with the permission of authorized Town staff and a Special Event Permit.
15. NO PERSON SHALL OCCUPY A FACILITY WITHIN A PARK THAT HAS BEEN RESERVED BY ANOTHER PERSON.
146. The Town of Fountain Hills specifically reserves the right to hold financially liable the parents of any minor child for consequences of the child's infraction of this code and/or any damage a minor child causes on or to Town property.
157. The director shall have the power to enact new park rules at any time to the extent that such rules are consistent with Federal and State law, and this Town Code. Such additional rules will be considered petty offenses as defined under B(1) and B(2) below.

B. Penalties

1. ViolationS of subsections A(4) through A(415) shall be considered a petty offenseS if the offender has not committed the same infraction within the last twenty-four (24) months. Petty Offenses shall be punishable by a fine of up to one hundred dollars (\$100.00).
2. Subsequent violation(s) of the same subsection A(4) through A(415) OFFENSE within a twenty-four (24) month period shall be considered a Class 3 Misdemeanor, and will be punishable as such under State Law.
3. Violations of subsectionS A(1), A(2), or A(3) of this section shall be considered a Class 1 MisdemeanorS and will be punishable as such under State Law.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, December 1, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

\_\_\_\_\_  
Linda M. Kavanagh, Mayor

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Grady E. Miller, Town Manager

\_\_\_\_\_  
Andrew J. McGuire, Town Attorney



# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** December 1, 2016

**Meeting Type:** Regular

**Agenda Type:** Regular

**Submitting Department:** Development Services

**Staff Contact Information:** Bob Rodgers, Development Services Director, 480-816-5138, [roddgers@fh.az.gov](mailto:roddgers@fh.az.gov)

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Not Applicable (NA)

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**REQUEST TO COUNCIL (Agenda Language):**

**DISCUSSION WITH POSSIBLE DIRECTION TO STAFF** regarding proposed Town of Fountain Hills Noise Regulations. Case #Z2016-05

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**Applicant:** The Town of Fountain Hills

**Applicant Contact Information:** Planning & Zoning Division

**Property Location:** Town-Wide

**Related Ordinance, Policy or Guiding Principle:**

Zoning Ordinance Section 2.01 – Amendments or Zone Changes

Zoning Ordinance Chapter 5 Section 5.19.A – Noise

Fountain Hills Town Code Chapter 11, Section 11-1-7 - Noise

**Staff Summary (background):**

The characteristics of sound and the regulation of noise is proving to be a complex subject.

During review, it became apparent that there could be some confusion and/or inconsistencies between the noise regulations in the Zoning Ordinance and those in the Town Code. In order to eliminate these issues, the proposal is to remove the noise ordinance provisions from the Zoning Ordinance completely and place them entirely within the Town Code.

In order to address the question of how other municipalities have dealt with the issue, staff has previously provided Council with the noise ordinances from Mesa, Scottsdale, Tempe, Phoenix, Paradise Valley, and Maricopa County. Below is the brief summary from the previous staff report:

- The ordinances each deal with the issue of noise differently. There do not appear to be any standardized sets of guidelines for decibel levels and some ordinances do not have regulations regarding decibels at all. The most common sound scale used is the "A" scale.
  - o Phoenix allows a maximum of 70 dB(C). This is a different scale from all the other ordinances reviewed and only applies to "hand-operated devices".
  - o Tempe allows a maximum of 70 dB(A). But the noise must be at least 5 dB over the maximum to be considered a violation.
  - o Scottsdale allows a maximum of 68 dB(A). But this is "rebuttable".

- Paradise Valley has the lowest maximum decibel limit of 56 dB(A). Except for vehicles which may be up to 82 dB(A).
- Mesa and Maricopa County have no maximum decibel limits in their regulations.
- Time of day constraints are more common.
  - Mesa uses 6 AM and 10 PM as their primary morning and night cut-off times.
  - Tempe and Paradise Valley use 7 AM and 10 PM
  - Phoenix uses 7 AM and 11 PM
  - Scottsdale and Maricopa County do not have time of day limits.
- The location used to measure the sound level varies.
  - Mesa has no point of measurement.
  - Phoenix uses 50' from the source. But, this only applies to "hand-operated devices".
  - Tempe and Paradise Valley measure the sound at the property line.
  - Scottsdale does not note where the measurement is to take place.
  - Maricopa County uses 500' from the source. But, the reading must be taken inside a closed building.
- Exemptions:
  - Mesa exempts permitted events, school activities, some construction activities, municipal work, and also other exemptions at the City Manager's discretion.
  - Scottsdale exempts permitted events and non-amplified noise generated by the patrons of a business.
  - Tempe exempts A\C units, lawn maintenance, school and government activities, warning signals, emergency vehicles, trains, church bells, and power plants.
  - Phoenix exempts municipal vehicles, road and bridge repairs, loudspeakers used in public addresses, hand-held devices as noted above if they emanate from a bicycle, push cart, etc and only play "pleasing melodies".
  - Paradise Valley exempts warning devices, emergency vehicles, municipal and utility work, A\C units, pool filters, and at the Town Manager's discretion.
  - Maricopa County exempts aircraft, emergency vehicles, non-amplified noise from schools and daycare facilities, HVAC units, non-amplified crowd noise from planned activities, boats, alarms, guns, some construction activities, public events, bells, racing events, trains, power plants, warning signals, farm equipment, and noise from parks and playgrounds.

## RECOMMENDED MODIFICATIONS

At the request of Council, staff has taken another look at the proposed ordinance amendments. Staff has also consulted with MCSO regarding their preferences in regards to methods of enforcement. Upon re-consideration, staff recommends that the Town Council consider the following modifications to the proposed amendments prior to approval:

1. Remove the two-points of decibel level measurement process in favor of using a single point of measurement. This is recommended to be a point within the complainant's location, with the windows and doors closed.
2. Establish the maximum decibel level permitted as 80 dB(A) during daylight hours and 50 dB(A) during nighttime hours.
3. Establish the daylight hours as 6:00 AM – 9:00 PM and the nighttime hours as 9:00 PM – 6:00 AM. Keep these times consistent all year long.
4. Require that events generally end at 10:00 PM. However, allow event permits to be issued for specific events to go until 11:00 PM as is done currently, with a maximum level of 70 dB(A) after 10:00 PM.

**Fiscal Impact** (initial and ongoing costs; budget status): None

**Budget Reference** (page number): NA

**Funding Source:** NA

If Multiple Funds utilized, list here: NA

**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):**

The Planning & Zoning Commission held a public hearing on September 8, 2016. After a lengthy discussion, the Commission voted 3-2 to forward a recommendation to Town Council to approve the noise ordinance revisions as previously presented.

**Staff Recommendation(s):**

Staff recommends approval of the noise ordinance revisions subject to the four modifications noted above.

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**SUGGESTED MOTIONS:**

NA

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**Attachments:**

Current Proposed Town of Fountain Hills Noise Regulations (5 pgs)  
10/22/16 Decibel Readings done by MCSO

**Submitted by:**

Robert Rodgers  11/22/2016  
Development Services Director Date

**Approved:**

 11/22/2016  
Grady Miller, Town Manager Date

# Decibel Level Comparison Chart

Commercial	Industrial	Residential	dB Level 1
Threshold For Hearing			0
Good Recording Studio		Breathing	10
		Rustling Leaves	15
		Whisper, Mosquito	20
Library		Living / Dining Room	30
Refrigerator Hum		Kitchen / Bathroom	40
Quiet Office	Power Lawn Mower	Home Office	50
		Birds at 10'	55
Conversational Speech			60
Piano Practice		Electric Shaver	60
Business Office		Piano Practice	65
Noisy Restaurant	Inplant Office	Street Traffic	70
Chamber Music		Barking Dog	75
Classroom		Alarm Clock	75
		Television / Dishwasher	75
Airplane at 1 mile	Manual Machines	Vacuum Cleaner	80
Reception / Lobby Area	Handsaw	Garbage Disposal	85
Motor Bus		Telephone Dial Tone	85
Applause in Auditorium		Lawn Mower	85
OSHA Required Hearing Protection in Factory			85
Teleconference Room		Train at 100'	90
Subway	Farm Tractor	Teenage Stereo	90

Sustained Exposure May Cause Hearing Loss			90
Music Practice Room	Electric Drill	Walkman at 5/10	94
French Horn	Average Factory Noise	Blender	100
Orchestra	Diesel Truck	Motorcycle	105
Computer Room	Printing Press	Train	105
Bass Drum	Heavy Truck	Power Saw	110
Dog Kennel	Power Mower	Baby Crying	110
Symphony Orchestra	Punch Press	Squeaky Toy to Ear	110
Pain Begins			120
Disco	Sandblasting	Shot Gun	120
Cymbal Crash	Pneumatic Clipper	Air Raid Siren	130
Dragcar Racing	Military Jet	Shotgun	140
Rock Concert	Aircraft Carrier Deck	Jet Takeoff	140
Chest Wall Begins to Vibrate			150
Ear Drum Breaks Instantly			160
Death of Hearing Tissue			180
Loudest Possible Sound			194

**The following is report shows the readings from a sound decibel sampling taken from various locations around Fountain Hills.**

Device used to obtain the sound readings: SPER SCIENTIFIC mini sound meter part#840014c

**Tuesday November 29, 2016**

1033 hours

**Palisades Blvd & Hampstead Drive**

*(Sample obtained on the corner of the intersection)*

School Bell	67.2 dB
No Traffic	47.3 dB
Traffic	70.3 dB

1042 hours

**Palisades Blvd & Fountain Hills Blvd**

*(Sample obtained on the SW corner of the intersection from the church parking lot)*

Minimum	53.3 dB
Maximum	76.5 dB

1050 hours

**Palisades Blvd & Saguaro Blvd**

*(Sample obtained from the SE corner in the park area about 75 feet from the intersection)*

Minimum	39.4 dB
Maximum	66.2 dB

1057 hours

**Avenue of the Fountains & Saguaro Blvd**

*(Sample obtained on the Avenue in the median about 75 feet west of the intersection)*

Minimum	48.3 dB
Maximum	67.5 dB

1101 hours

**Avenue of the Fountains & Verde River Drive**

*(Sample obtained at the intersection on the SE side)*

Minimum	43.6 dB
Maximum	79.3 dB (Construction vehicles operating)

1103 hours

**Verde River Drive & Paul Nordin Pkwy**

*(Sample obtained from the Cul-De-Sac of the connecting streets)*

Minimum	50.2 dB
Maximum	56.5 dB

1109 hours

**Saguaro Blvd & Kingstree Blvd**

*(Sample obtained from Kingstree about 75-100 feet West of Saguaro)*

Minimum 55.4 dB

Maximum 56.3 dB

1117 hours

**Saguaro Blvd & Shea Blvd**

*(Sample was obtained from the MCO Parking lot)*

Minimum 55.6 dB

Maximum 72.4 dB

1124 hours

**Target Shopping Center Parking Lot**

*(Sample was obtained from the middle of the parking lot area of Target)*

Minimum 50.1 dB

Maximum 59.4 dB

1126 hours

**Shea Blvd & Fountain Hills Blvd**

*(Sample was taken from the north side of the intersection)*

Minimum 54.7 dB

Maximum 76.6 dB

1131 hours

**Shea Blvd & Palisades Blvd**

*(Sample obtained from the South side of the intersection)*

Minimum 57.5 dB

Maximum 71.5 dB

1136 hours

**Fry's Grocery Store Parking Lot**

*(Sample obtained from the middle of the parking lot)*

Minimum 48.4 dB

Maximum 49.5 dB

1141 hours

**Palisades Blvd & Eagle Ridge Drive (Palomino)**

*(Sample was obtained on Eagle Ridge about 75 to 100 feet from the intersection)*

Minimum 45.1 dB

Maximum 58.2 dB

1144 hours

**CopperWynd Parking Lot**

*(Sample was obtained in the parking lot near the tennis courts)*

Minimum 41.5 dB

Maximum 50.9 dB

1147 hours

**Adero Canyon Area**

*(Sample was obtained near the sales office area at the paved intersection)*

Minimum 60.0 dB

Maximum 66.5 dB

1156 hours

**Sunridge Drive & Sierra Madre Drive**

*(Sample was obtained just south of the intersection)*

Minimum 37.9 dB

Maximum 44.9 dB

1205 hours

**Aspen Drive & Sourdough Place**

*(Sample obtained at the intersection)*

Minimum 32.4 dB

Maximum 40.8 dB

\* While obtaining the readings above. A dog started barking in the area about 75-100 feet to the west from the backyard of a residence. A sound sample was obtained showing 52.1 dB

1217 hours

**Town Hall Parking Lot**

*(Sample was obtained from the south side of Town Hall in the parking lot area)*

Minimum 52.4 dB

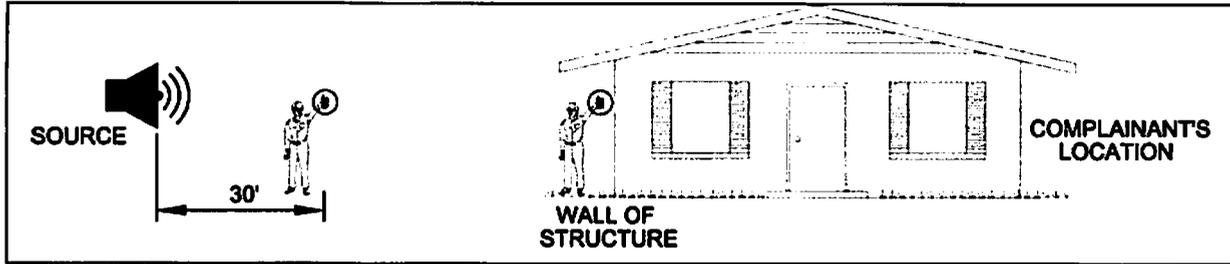
Maximum 71.4 dB

**TOWN OF FOUNTAIN HILLS  
NOISE REGULATIONS**

**Section 11-1-7 Noise.**

- A. **Purpose.** The purpose of this Section is to promote the health and general welfare of the citizens and businesses of the Town by balancing the need to protect the community against unreasonable noise with the legitimate goal of promoting and encouraging commercial and business growth in the community.
- B. **Definitions.** The following words, terms and phrases, when used in this Section, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
1. “A’ band level” means the total sound level of all noise as measured with a sound level meter using an A-weighting network. The unit is the dB(A).
  2. “Complainant” means a person who files a noise complaint.
  3. “Decibel” means a sound pressure that is 20 times the logarithm to the base 10 of the ratio of the pressure of sound to the reference pressure,  $2 \times 10^{-5}$  newton/meter<sup>2</sup>.
  4. “Emergency work” means any (a) work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency that has or may result in a disruption of service and that is necessary to restore property to a safe condition following a public calamity, (b) work required to protect the health, safety or welfare of persons or property or (c) work by private or public utilities when restoring utility service.
  5. “Noise violation” means any noise created that exceeds the maximum limits as specified in this Section.
  6. “Sound level (noise level)” means the sound measured with the A-weighting and slow response by a sound level meter.
  7. “Sound level meter” means an instrument including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels that satisfies the pertinent requirements for Type 1 sound level meters as set forth in the most recent version of American Standard Specifications for Sound Level Meters ANSI S1.4-1983.
  8. “Sound Source” means the cause and location of the noise.
- C. **Measurement Standard.** Sound level shall be measured with a sound level meter operated in accordance with the manufacturer’s guidelines and instructions.

**Table 1 Measurement Standards:**



D. **Noise Violations Prohibited.** Subject to the complaint processing provisions in Subsection 11-1-7(E) below, it shall be a violation of this Section to emit or allow to be emitted noise in excess of the permissible noise levels set forth in Table 2 below.

**Table 2 Permissible Noise Levels:**

<b>Monday – Thursday, May 15th to September 15th</b>		
<b>Measurement Location</b>	<b>Time</b>	<b>Decibel dB(A)</b>
<b>Wall of structure proximate to complainant's location</b>	<b>5:30 am to 11:00 pm</b>	<b>55</b>
<b>Approximately 30 feet from the sound source</b>		<b>85</b>
<b>Wall of structure proximate to complainant's location</b>	<b>11:00 pm to 5:30 am</b>	<b>45</b>
<b>Approximately 30 feet from the sound source</b>		<b>75</b>
<b>Monday – Thursday, September 16th to May 14th</b>		
<b>Measurement Location</b>	<b>Time</b>	<b>Decibel dB (A)</b>
<b>Wall of structure proximate to complainant's location</b>	<b>6:00 am to 11:00 pm</b>	<b>55</b>
<b>Approximately 30 feet from the sound source</b>		<b>85</b>
<b>Wall of structure proximate to complainant's location</b>	<b>11:00 pm to 6:00 am</b>	<b>45</b>
<b>Approximately 30 feet from the sound source</b>		<b>75</b>

<b>Friday – Sunday, year long</b>		
<b>Measurement Location</b>	<b>Time</b>	<b>Decibel dB(A)</b>
<b>Wall of structure proximate to complainant's location</b>	<b>7:00 am to 11:00 pm</b>	<b>55</b>
<b>Approximately 30 feet from the sound source</b>		<b>85</b>
<b>Wall of structure proximate to complainant's location</b>	<b>11:00 pm to 7:00 am</b>	<b>45</b>
<b>Approximately 30 feet from the sound source</b>		<b>75</b>

- E. **Complaint Processing.** After receiving a noise complaint from a complainant, an individual authorized under Subsection G of this Section shall measure the noise level with such measurements being made both at the wall of the complainant's location and approximately 30 feet from the sound source, as illustrated in Table 1 above. The authorized individual shall determine a noise violation has occurred when the decibel levels at both the complainant's location and at approximately 30 feet from the sound source exceed the maximum decibel levels set forth in Table 2 above.
- F. **Sound Truck.** It is unlawful to play, operate, or use any device known as a sound truck, loud speaker or sound amplifier, radio or phonograph with loud speaker or sound amplifier or any instrument of any kind or character that emits loud and raucous noises and is attached to and upon any vehicle unless such person in charge of such vehicle.
- G. **Violations.** The Town Manager or designee, code official or Town law enforcement officer may issue civil citations pursuant to Subsection 1-8-3(D) of this Code to enforce violations of this Section. After civil enforcement as set forth in Subsection 1-8-3(D) of this Code, any POST-certified law enforcement officer or the Town Prosecutor may issue criminal complaints pursuant to Subsection 1-8-2(A) to enforce this Section.
- H. **Exemptions.** The following uses and activities shall be exempt from Town noise level regulations:
1. Noises resulting from air-conditioning equipment when such equipment is in proper operating condition.
  2. Noises resulting from lawn maintenance equipment operated during daylight hours when such equipment is functioning with all mufflers and standard noise-reducing equipment in use and in proper operating condition.

3. **Noises of safety signals, warning devices and emergency pressure relief valves.**
4. **Noises resulting from an authorized emergency vehicle when responding to an emergency call or acting in time of emergency.**
5. **Noises resulting from emergency work.**
6. **Church chimes or bells.**
7. **Any noise created by any Town or Town contractor vehicles, equipment or facilities while being operated or utilized for official business.**
8. **Noises resulting from a special event being held pursuant to a Town-issued special event permit.**
9. **An un-amplified human voice.**

## Decibel level readings for October 22, 2016

The reading at the resort was taken at the adjacent cul de sac opposite the resort. The decibel level reader was held above the wall to avoid interference of the travelling sound. At 21:20, I could audibly hear music and voices speaking in normal tones. It was not loud but it could clearly be heard. The decibel level reading at that time was 46 decibels. I returned to the same area at 22:00. The wedding had ceased and there was no music or speaking at this time. I took a decibel level reading anyway and found it to read 34 decibels.

I took a reading at the bar/restaurant called Grapables. The reading was taken from the parking lot approximately 100 feet away. A woman was performing with a microphone and amplifier. The reading at that time was 52 decibels maximum at 21:30. I returned again at 22:10 and the woman was performing again. The reading at that time was 56 decibels.

There were no other events which were louder than normal speaking levels in town to record on that evening.

Sgt. Engelbeck



# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Consent

**Submitting Department:** Public Works

**Staff Contact Information:** Paul Mood, Public Works Director, pmood@fh.az.gov

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Pavement Management Program

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**REQUEST TO COUNCIL** (Agenda Language): Consideration of approving Cooperative Purchase Agreement C2017-071 with Infrastructure Management Services, LLC in the amount of \$106,245.00 for pavement performance data collection and reporting.

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**Applicant:** Infrastructure Management Services, LLC

**Applicant Contact Information:** 1820 W Drake Drive, Suite 104, Tempe, AZ 85283

**Owner:** Town of Fountain Hills

**Owner Contact Information:** NA

**Property Location:** NA

**Related Ordinance, Policy or Guiding Principle:** NA

**Staff Summary** (background): The Town previously completed a one-time Pavement Management Report in 2009 and did not have the funding necessary to implement the recommendations or provide asset management software and subsequent updates.

The proposed contract with Infrastructure Management Services (IMS) will provide for the mapping of the Town's roadway network, pavement data collection, asset management software, analysis and reporting. The contract also provides for a \$15,000 owner's allowance for deflection testing to analyze the roadway subgrade in specific areas identified by the Town and to provide additional analysis and reporting as directed by staff. The contract also provides for up to four annual renewals (\$6,000 ea.) to host the pavement management software and to provide annual updates based upon maintenance data provided by staff.

The data collection and reporting will help aid staff in assessing the overall pavement condition of the Town's current roadway network and provide pavement management analysis based on current and future funding scenarios.

The contract breakdown is as follows:

\$67,245	Initial Contract
\$15,000	Owner's Allowance
\$ 6,000	FY17-18 Renewal
\$ 6,000	FY18-19 Renewal

\$ 6,000 FY19-20 Renewal  
\$ 6,000 FY20-21 Renewal

**Risk Analysis** (options or alternatives with implications):

**Fiscal Impact** (initial and ongoing costs; budget status):

**Budget Reference** (page number): 276

**Funding Source:** Hurf Fund

If Multiple Funds utilized, list here:

**Budgeted; if No, attach Budget Adjustment Form:** Yes

**Recommendation(s) by Board(s) or Commission(s):** NA

**Staff Recommendation(s):** Staff recommends approval of contract C2017-071.

**List Attachment(s):** Contract C2017-071

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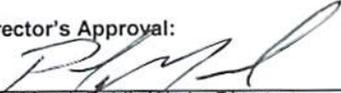
**SUGGESTED MOTION** (for Council use): Motion to approve Cooperative Purchase Agreement C2017-071 with Infrastructure Management Services, LLC in the amount of \$106,245.00 for pavement performance data collection and reporting.

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Prepared by:

Paul Mood, Public Works Director 11/22/2016

Director's Approval:

  
Paul Mood, Public Works Director 11/22/2016

Approved:

  
Grady E. Miller, Town Manager 11/22/2016

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
IMS INFRASTRUCTURE MANAGEMENT SERVICES, L.L.C.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of December 1, 2016, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and IMS Infrastructure Management Services, L.L.C., an Arizona limited liability company (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Goodyear, Arizona ("Goodyear") entered into Contract No. CON 16-3432, dated January 26, 2016 (the "Goodyear Contract"), for the Contractor to provide pavement inventory data collection services. A copy of the Goodyear Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the Goodyear Contract, at its discretion and with the agreement of the awarded Contractor, and the Goodyear Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Goodyear Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with pavement performance data collection, modeling and hosting of Lucity asset management software, as more particularly set forth in Section 2 below (the "Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2017 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Goodyear Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the Town, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Goodyear Contract has not expired or has been extended, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this

Agreement for an additional one-year term and (iv) the Town approves the additional one-year term in writing (including any price adjustments approved as part of the Goodyear Contract), as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall provide to the Town the Services under the terms and conditions of the Goodyear Contract and as more particularly set forth in the Quotation attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. For the Initial Term, the Town shall pay Contractor an aggregate amount not to exceed \$82,245.00 for the Services at the unit rates as set forth in the Goodyear Contract and as more particularly set forth in the Quotation, of which \$15,000.00 is an owner's contingency which shall be utilized at the Town's sole discretion. Thereafter, for each subsequent Renewal Term, if any, the Town shall pay the Contractor an annual aggregate amount not to exceed \$6,000.00 for the Services at the unit rates set forth in the Goodyear Contract and as more particularly set forth in the Quotation. The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed \$106,245.00.

4. Payments. The Town shall pay the Contractor monthly, based upon Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Goodyear Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Goodyear Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the

duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

7. Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

8. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Goodyear Contract and invoices, the documents shall

govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Goodyear Contract (collectively, the “Unauthorized Conditions”), other than the Town’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Goodyear Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. **Rights and Privileges.** To the extent provided under the Goodyear Contract, the Town shall be afforded all of the rights and privileges afforded to Goodyear and shall be the “City” (as defined in the Goodyear Contract) for the purposes of the portions of the Goodyear Contract that are incorporated herein by reference.

13. **Indemnification; Insurance.** In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to Goodyear to the extent provided under the Goodyear Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor’s obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

14. **Notices and Requests.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:           Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Grady E. Miller, Town Manager

With copy to:           GUST ROSENFELD P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire

If to Contractor: IMS Infrastructure Management Services, L.L.C.  
1820 West Drake Drive, Suite 104  
Tempe, Arizona 85283  
Attn: Jim Tourek

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**“Town”**

**TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation**

\_\_\_\_\_  
Grady E. Miller, Town Manager

ATTEST:

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**(ACKNOWLEDGMENT)**

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2016, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

\_\_\_\_\_  
Notary Public

(Affix notary seal here)

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

**“Contractor”**

IMS INFRASTRUCTURE MANAGEMENT SERVICES, L.L.C.,  
an Arizona limited liability company

By: 

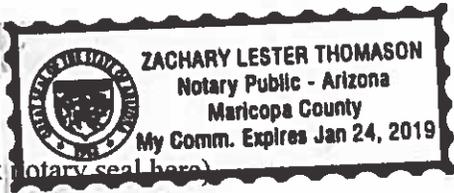
Name: Stephen Smith

Title: Member/Manager

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On November 1<sup>st</sup>, 2016, before me personally appeared Stephen J. Smith, the Member/Manager of IMS INFRASTRUCTURE MANAGEMENT SERVICES, L.L.C., an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the limited liability company.



  
Notary Public

**EXHIBIT A  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
IMS INFRASTRUCTURE MANAGEMENT SERVICES, L.L.C.**

**[Goodyear Contract]**

**See following pages.**

	CITY OF GOODYEAR	OFFICE OF PROCUREMENT P.O. Box 5100 Goodyear, Arizona 85338 Phone: 623-882-7893
	PROFESSIONAL SERVICES CONTRACT  CON 16-3432	

**DESCRIPTION OF SERVICES:** Pavement Inventory Data Collection

**To the City of Goodyear:** The undersigned Contractor hereby offers and agrees to furnish the goods and/or services in compliance with this Contract, as the term Contract is defined in this document.

**By signing and submitting this Offer, Contractor certifies and warrants that Contractor:** has read, understands and agrees to comply with the Contract as defined here; Contractor is qualified to perform all Services required herein; has no known, undisclosed conflict of interest; has not made an offer of any gift(s), payment(s) or other consideration to any City employee, elected official who has or may have had a role in the procurement process for this Contract; pursuant to A.R.S. § 41-4401, Contractor and its subcontractors will comply with all immigration laws and regulations that relate to its employees and A.R.S. § 23-214; and the signatory is an officer or duly authorized agent of the Contractor with full power and authority to submit binding offers for the goods and/or services as specified herein.

Arizona Transaction (Sales) Number: <u>NA</u>	Arizona Contractor License Number: <u>NA</u>
City of Goodyear Business Registration No.: <u>pending</u>	Privilege Tax License Number: <u>NA</u>
<u>IMS Infrastructure Management Services LLC</u> Contractor's Company Name	<u>[Signature]</u> Signature of Person Authorized to Sign Offer
<u>1820 W. Drake Dr. Suite 108</u> Address	<u>Stephen Smith</u> Printed Name
<u>Tempe</u> <u>AZ</u> <u>85283</u> City State Zip Code	<u>Member/Manager 1-3-16</u> Title Date
<u>480.839.4347</u> Telephone	<u>ssmith@ims-rst.com</u> Email

**ACCEPTANCE OF OFFER - CITY OF GOODYEAR**

Contractor's Offer is hereby accepted and a Contract awarded by the City. Contractor is now bound to provide the goods and/or services as specified in Scope of Work of this Contract. Contractor shall not start any billable work or provide any material/services until the Contractor receives an executed purchase order or written notice to proceed.

N/A  
City Manager, City of Goodyear (if applicable)

Attested by:  
Maureen Scott  
Maureen Scott, City Clerk  
City Seal



Official File

Eff. Date: 1/26/16  
[Signature]  
Jacob Behrens, Procurement Manager Date

Approved as to form:  
[Signature]  
Roric Massey, City Attorney

**PROFESSIONAL SERVICES CONTRACT  
STANDARD TERMS AND CONDITIONS**

CON 16-3432

This Professional Services Contract ("Contract"), is made on this 26<sup>th</sup> day of January, <sup>2016</sup>2015 ("Effective Date"), by and between the City of Goodyear, an Arizona municipal corporation ("City") and Infrastructure Management Services (IMS), a limited liability corporation ("Contractor"). The City engages the Contractor to perform professional services for the project known as: Pavement Inventory Data Collection ("Project"). The City and Contractor may be referred to individually herein as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the City is authorized by the City Charter to execute contracts for professional services;

WHEREAS, the Contractor represents that Contractor has the requisite expertise, and is qualified to perform the services described in this Contract; and

WHEREAS, the City and Contractor desire to memorialize their agreement with this Contract.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**SECTION 1        DEFINITIONS**

- 1.1 "Contract" means this Professional Services Contract, including the standard terms and conditions, special terms and conditions, specifications/scope of work, fee schedule/price sheet, the solicitation documents, instructions to offerors (including documents referenced and included therein) and any attachments, exhibits and addendum referenced herein, the offer and any best and final offer as accepted by the City, and any amendments.
- 1.2 "Contractor" means the individual, partnership, entity, firm, company or corporation who, as a result of the competitive process, is awarded a contract by the City of Goodyear.
- 1.3 "Days" means calendar days unless otherwise specified herein.
- 1.4 "Litigation Expense" means any court filing fee and costs, arbitration fees or costs, witness fee, arbitration fees, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Contract, including, without limitation, in each case, attorneys' fees, professional fees, disbursements and each other fee and cost of investigating and defending, appealing or asserting any claim for indemnification under this Contract.
- 1.5 "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than a litigation expense.
- 1.6 "Services", "Work" or "Project" means the subject matter of this Contract as set forth in the Scope of Work.
- 1.7 "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any goods or services required for the performance of the Contract.

- 1.8 “Work Product” means but is not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original Mylar drawings, computer aided drafting and design (CADD) file, computer disks and/or other electronic records and media, and all “architectural work” and “works made for hire” as defined herein and by the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

## **SECTION 2 SERVICES PROVIDED BY CONTRACTOR**

- 2.1 Scope of Work. Contractor shall provide those “Services” described in Exhibit “A” (Scope of Work) attached hereto and incorporated herein by reference. Additional Services, which are outside the scope of basic services contained herein shall not be performed by Contractor without prior written consent of the City. Authorized additional Services shall be compensated for by a fee mutually agreed upon between the City and Contractor.
- 2.2 Professional Practices. All Services shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices. Contractor is responsible for knowing and complying with all applicable laws, rules, and regulations, including all applicable building regulations, license and permits requirements.
- 2.3 Performance to City’s Satisfaction. Contractor agrees to perform all Services required by this Contract to the complete satisfaction of the City and as required herein. If the quality of work is not satisfactory to the City, in addition to any and all other remedies available by law, the City in its discretion has the right to do any or all of the following: (i) Meet with Contractor to review quality of work and resolve the matters of concern; (ii) Require Contractor to repeat the work at no additional fee until it is satisfactory to the City; and/or (iii) Terminate the Contract as provided herein.
- 2.4 Investigation. Contractor warrants and agrees familiarity of the work is required to perform the Services, is satisfied as to the conditions under which it is to be performed, is competent to perform the Services and enters into this Contract based upon the Contractor’s own investigation.

## **SECTION 3 CONTRACT TERM**

- 3.1 The Contract term shall be one (1) year commencing the Effective Date, unless terminated sooner in accordance with the provisions herein. The Contract may be extended for additional consecutive terms, not to exceed a total of five (5) years, subject to appropriations and the mutual agreement of the Parties.

## **SECTION 4 COMPENSATION AND BILLINGS/PAYMENTS**

- 4.1 Compensation. Contractor’s total compensation, including those Services furnished by its Subcontractors, shall not exceed \$198,163.00, in accordance with the Fee Schedule found in Contractor’s offer.
- 4.2 Method of Billing. Contractor will invoice City by the 10th day of each month for Services provided during the prior month. Invoices shall contain itemized hourly fees and specifically describe the Services performed, the name of the person(s) performing the Services, and supporting documentation.
- 4.3 Review and Withholding. City’s Project Manager shall review invoices to certify payment requests. If an invoice is rejected, the City Project Manager will issue a notice of the items not approved for payment. If during the course of the Contract, Services performed do not meet the requirements set forth in the Contract, Contractor shall correct or modify the work to comply with the Contract requirements and the City shall have the right to withhold payment for such work until Contractor complies with the requirements of the Contract to the reasonable satisfaction of the City.
- 4.4 Payment. City shall pay Contractor within 30 days from the date the City receives a complete, correct and approved invoice.

- 4.5 Advance/Late Payments. Advance payments are not authorized. The City will not honor any invoices or claims which are tendered more than one (1) year after the last item of the account accrues.
- 4.6 Fund Appropriation Contingency. Funds may not presently be available for performance under this Contract beyond the City's current fiscal year starting July 1 and ending on June 30<sup>th</sup> of the following year. If payment for Contract Services extends into a new fiscal year, the City's obligation to pay for such performance is contingent upon approval of future appropriations by City Council to fund this Contract. The City shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless such funds are appropriated.
- 4.7 Free on Board ("FOB") Destination. All prices are F.O.B final destination, unless otherwise provided.
- 4.8 Taxes. Contractor is solely responsible for any and all tax obligations that may result from Contractor's performance of this Contract.

## **SECTION 5 PROJECT TEAM/SUBCONTRACTORS/CITY PROJECT MANAGER**

- 5.1 Project Team Selection. Prior to the start of any Services, Contractor shall provide the City detailed resumes of the proposed project manager, team members, and all subcontractors Contractor wishes to assign or use to perform the Contract Services for review and final approval by the City. Contractor will maintain an adequate and competent staff of qualified persons with sufficient training, knowledge and experience consistent with applicable standards as required by this Contract. The project manager shall be responsible for and supervise all project team members and any other employees and subcontractors assigned by the Contractor. Contractor agrees that, once assigned to work under this Contract, the project manager and team shall not be removed or replaced without prior written consent of the City.
- 5.2 Discharge, Reassign, Replacement. Contractor will not discharge, reassign, replace or diminish the responsibilities of any team member approved by the City without City's prior written consent unless that person leaves the employment of Contractor, in which case the substitute must be approved by the City. Contractor will promptly remove any project team member at the City's request if that member's performance does not equal or exceed the level of competence the City may reasonably expect of a person performing those duties or if the City reasonably believes the acts or omissions of that person are detrimental to the development of the Project.
- 5.3 Coordination; Interaction. Contractor's project team are expected to work in close consultation and cooperation with all professionals working on the Project.
- 5.4 Subcontracts. Contractor shall not enter into any subcontract for the performances of any Service for this Contract without the prior approval of the City's Project Manager. Contractor shall identify all proposed subcontractors and subcontractor's proposed responsibilities. All subcontracts shall incorporate by reference all terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.
- 5.5 City Project Manager. The City will designate a City Project Manager to act on behalf of the City during the term of this Contract. The City Project Manager has the authority to administer this Contract and shall oversee and monitor compliance with all Contract terms and conditions. All requests for information or decisions to be made by the City for this Contract shall be directed to the City Project Manager.

## **SECTION 6 LICENSING, DEBARMENT AND SUSPENSION**

- 6.1 Licensing/Permits. Contractor warrants and certifies that Contractor and its Subcontractors will maintain valid licenses, registrations, permits, and other approvals necessary to perform the Services required under this Contract ("Approvals"). Contractor shall immediately advise the City in writing of any change in information provided by Contractor or its subcontractors as it relates to any Approvals. Noncompliance with this provision is a material breach of Contract.

- 6.2 **Debarment/Suspension.** Contractor warrants and certifies neither Contractor nor any of its subcontractor:
- a. Are presently debarred, suspended, proposed for debarment, declared ineligible or otherwise legally excluded from contracting with any federal, state or local government entity; and
  - b. Have not been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property within a three (3) year period preceding this Contract;
  - c. Are not, or have not been, indicted of or otherwise criminally charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing any public transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and
  - d. Have not had one or more public transaction (federal, state or local) terminated for cause or default.
- 6.3 City has no affirmative duty or obligation to confirm or deny the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.

## **SECTION 7 WORK PRODUCT/CONFIDENTIALITY/ENCRYPTION**

7.1 **Ownership of Intellectual Property.** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Contract and/or any related subcontract ("Intellectual Property") shall be work made for hire and the City shall be considered the creator of such Intellectual Property. The City shall own the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City, within 30 days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to vest ownership of the Intellectual Property in the City and shall take no affirmative actions that may have the effect of vesting all or part of the Intellectual Property in any entity or person other than the City. If applicable, Contractor shall place the professional seal of Contractor on all plans and documents prepared in the performance of this Contract. This section is intended to apply to all original designs, plans and specifications exclusively developed for the City by Contractor and not intended to apply to standard details, systems and specifications developed and used by Contractor which shall remain the property of Contractor and may be used with other projects without City's consent. Contractor warrants, and agrees to indemnify, hold harmless and defend the City for, from and against any claim that any Work Product infringes on third-party propriety rights. It is expressly agreed by Contractor that the covenants in this section are irrevocable and perpetual.

7.2 **Confidential/Proprietary.** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Contract are confidential, proprietary information owned by the City. Contractor shall not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager.

7.2.1 Contractor, its employees and subcontractors, in the course of their duties, may have access to financial, accounting, statistical, and personnel data of private individuals and employees of the City. Contractor covenants that all such data, documents, discussion, or other information developed or received by Contractor or provided in performance of this Contract, whether electronic format or hard copy, are deemed confidential or restricted City information, and shall be secured and protected to avoid unauthorized access, and not be disclosed by Contractor, its employees or subcontractors without prior written authorization from the City.

7.2.2 At a minimum Contractor shall ensure all electronic transmissions of confidential data are encrypted and any cryptographic algorithm implementations used have been validated by the National Institute of Standards and Technology (NIST). The use of proprietary encryption algorithms will not be allowed for any purpose. The export of encryption technologies is restricted by the U.S. Government.

7.2.3 In the event that Contractor reasonably believes that any Confidential Data has been compromised, Contractor shall notify the City Attorney immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

7.2.4 Contractor agrees to comply with this section and the Information Technology Non-Disclosure Agreement attached hereto and incorporated herein by reference; noncompliance is a material breach of Contract.

7.3 City Use. City may reuse the Work Product provided by Contractor and its subcontractor pursuant to this Contract at its sole discretion. In the event the Work Product is used for another project or modified by the City without further consultation with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of such use of the Work Product. In such case, City will also remove any seal and title block from the Work Product.

## SECTION 8 TERMINATION

8.1 Termination. The City may terminate this Contract in whole or in part, with or without cause and for any reason, including the City's convenience, upon thirty (30) days written notice to the Contractor.

8.2 Compensation. In the event of termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for Services performed to the date of such termination, the Contractor shall receive a fee for the percentage of services actually performed to the satisfaction of the City. This fee shall be in the amount mutually agreed upon by the Contractor and City, based on the Scope of Work and fee schedule. If there is no mutual agreement, the City Project Manager shall determine the percentage of work performed for each task detailed in the Scope of Work, with Contractor's compensation based on such determination and the fee schedule included herein.

8.3 Acts of Insolvency/Other. The City may terminate this Contract immediately by written notice to Contractor if any of the following occurs: Contractor becomes insolvent; makes a general assignment for the benefit of creditors; suffers or permits the appointment of a receiver for its business or assets; becomes subject to any proceeding under any bankruptcy or insolvency law, foreign or domestic; is wound up or liquidated, voluntarily or otherwise; persistently or repeatedly refuses or fails to complete the work required herein; persistently disregards law, rules or regulations; or fails to make prompt payment to subcontractors for material or labor.

8.4 Documents/Work Product. In the event of termination of this Contract, all documents and work product prepared by Contractor pursuant to this Contract including, but not limited to, finished or unfinished design, development and constructions documents, studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of the City's delivery of termination notice to Contractor, at no cost to the City. Any use of uncompleted documents without specific written authorization of Contractor shall be at City's sole risk and without liability or legal expense to Contractor.

## SECTION 9 INSURANCE

9.1 Minimum Scope and Limits of Insurance. Contractors shall obtain and maintain in full force and effect during the life of this Contract, and any warranty period, all of the following minimum scope of insurance coverages with an insurance company duly licensed by the State of Arizona with a current A.M. Best Company, Inc rating of not less than A- or above and a category rating of not less than "VIII" with policies and forms satisfactory to the City. Use of alternative insurers requires prior written approval from City.

9.1.1 Commercial General Liability. Commercial General Liability insurance with a limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products/completed operations, contractual covering, personal injury/bodily injury,

property damage, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG 00 01 07 98 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations of indemnification required by this Contract. A general liability insurance policy may not be written on a "claims made" basis. These limits may be met through a combination of primary and excess liability coverage.

**9.1.2 Automobile Liability.** Commercial and Business Automobile Liability insurance for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than \$1,000,000, combined single limits, per occurrence for bodily injury and property damage. Coverage will be at least as broad as coverage Code 1 "any auto" under Insurance Service Office policy form CA 00 01 10 01 or any replacement thereof.

**9.1.3 Workers' Compensation.** Workers' Compensation as required by State and federal law statutes having jurisdiction over its employees engaged in the performance of any Services herein. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

**9.1.4 Professional Liability ("E &O").** E&O liability insurance with policy limits of not less than \$1,000,000 each claim and \$2,000,000 annual aggregate limit. Architects' and engineers' coverage shall be endorsed to include contractual liability. Contractor shall obtain and maintain, such E&O liability insurance during the life of this Contract and for three years after completion of the work hereunder.

**9.1.5 Umbrella/Excess Liability.** Contractor and Subcontractor shall maintain Umbrella and Excess Liability insurance with an limit of not less than \$2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

**9.2 Claim Reporting.** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.

**9.3 Notice of Cancellation.** Each certificate for each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage by endorsement to limits lower than those required by this Contract, except after prior written consent from the City. Notice will be sent as required herein.

**9.4 Endorsements/Certificates of Insurance.** The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

**9.4.1 Additional Insureds.** "The City of Goodyear and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of, or related to, activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor."

**9.4.2 Additional Insured – Goodyear Ballpark and Recreational Complex.** Any Contracts addressing, or related to, the Goodyear Ballpark and Recreational Complex shall also identify the Cleveland Indians Baseball Company, and the Cincinnati Reds, LLC as additional insured and endorse the same.

**9.4.3 Primacy of Coverage.** Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of insurer's liability. Contractor's policy shall be primary and non-contributory.

9.4.5 Certificates of Insurance. Contractor shall provide the City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Contract. The insurance certificates shall be attached hereto and incorporated hereby by this reference.

- 9.5 No Representation of Coverage Adequacy. The insurance requirements herein are *minimum requirements*. The City in no way warrants that the minimum requirements are sufficient to protect Contractor from liabilities that might arise out of the performance of the Work under this Contract by Contractor, and the Contractor is free to purchase additional insurance. Any insurance coverage carried by the City or its employees is excess coverage and not contributory coverage to that provided by the Contractor. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this Contract.
- 9.6 Non-Waiver. The City reserves the right to review any and all insurance policies and/or an endorsement required by this Contract, but has no obligation to do so. Failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract. Any failure of Contractor to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers.
- 9.7 Notice of Cancellation. Each certificate for each insurance policy required by this Section shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage by endorsement to limits lower than those required by this Contract except after prior written consent from the City.
- 9.8 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- 9.9 Other Contractors or Vendors. Contractor shall ensure its subcontractors and any vendors that may be contracted with in connection with the Project procure and maintain insurance coverage as is appropriate for their particular contract and properly endorse the City as required in this Section 9.

## SECTION 10 INDEMNIFICATION/RISK OF LOSS

- 10.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify, save and hold harmless the City, its elected officials, officers, agents and employees (hereinafter referred to as "Indemnitee") for, from and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorney's fees and Litigation Expenses asserted by a third-party (i.e. a person or entity other than City or Contractor) and that is caused by, related to, arises out of, or alleged to have resulted from, in whole or in part, any negligent, reckless or intentional acts, errors, fault, mistakes, omissions, work, or service of the Contractor, its directors, officers, employees, agents, representatives, or any tier of subcontractors or any other person for whose acts, errors, fault, mistakes omissions, work or service the Contractor may be legally liable in the performance of this Contract.

The Indemnification provided hereunder shall extend to claims arising out of, or recovered under, Arizona's Workers' Compensation Law or the failure of Contractor to conform to any applicable and appropriate law, 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 the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Contractor agrees to waive all rights of subrogation against Indemnitee for claims arising from the work performed by Contractor, its directors, officers, employees, agents, representatives, or any tier of subcontractors pursuant to this Contract. The provisions of Section 10 are irrevocable and perpetual, and shall survive the expiration or termination of this Contract.

- 10.2 **Indemnification – Patent, Copyright and Trademark.** To the fullest extent permitted by law, Contractor agrees to defend, indemnify, save and hold harmless the City, its elected officials, officers, agents, and employees (hereinafter referred to as "Indemnitee") individually and collectively at Contractor's own expense, for, from and against any liability, including any and all expenses, losses, royalties, profits, judgments, damages, including all legal costs and expenses, court costs and attorney fees, for infringement of any patent, copyright, trademark and other proprietary rights of any third parties arising out of, related to or resulting from this Contract or use by the City of materials furnished or Services performed under this Contract. The City may be represented by, and actively participate through, its own counsel in such suit or proceedings, if it is so desires.
- 10.3 **Cooperation.** In the event any claim or action is brought against the City relating to Contractor's Services, Contractor shall provide the City with any and all reasonable assistance and cooperation which the City may require or request.
- 10.4 **Title and Risk of Loss.** Title and risk of loss of goods and Services shall not pass to the City until the City authorized personnel actually receives and accepts the goods or Services at the point of delivery; and such loss, injury or destruction shall not release the Contractor from any obligation hereunder. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming goods shall remain with the Contractor regardless of receipt.
- 10.5 **Acceptance.** All material and Services are subject to final inspection and acceptance by the City. Material or Services failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be rejected by the City. If returned or rejected, all costs are the responsibility of the Contractor.
- 10.6 **Force Majeure.** Neither Party shall be in default by reason of any failure in performance of this Contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable Acts of God; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions. If either Party is delayed at any time in the progress of the Work by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

## **SECTION 11 REPRESENTATIONS/WARRANTIES**

- 11.1 **Warranties.** Contractor warrants that all goods and Services provided under this Contract shall fully conform to the specifications of this Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 11.2 **Safety.** Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of law, rules, and regulations. If applicable, Contractor shall erect and properly maintain at all time, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post signs warning against known or unusual hazards.
- 11.3 **Responsibility for Errors.** Contractor shall be responsible for its work and results under this Contract. Contractor, when requested, shall furnish clarification and/or explanation as may be required by the City's Project Manager regarding any Services rendered under this Contract at no additional cost to the City. In the event that an error or omission attributable to Contractor occurs, Contractor shall, at no cost to the City, provide all necessary design drawings, estimates and other professional services necessary to rectify and correct the matter to the sole satisfaction of the City.

- 11.4 **Noncompliance with Section 11** is a material breach of Contract. Section 11 shall survive the termination or expiration of this Contract.

## **SECTION 12 CONTRACTOR REPRESENTATIONS**

- 12.1 **Compliance with law.** Contractor, its employees and subcontractors shall provide all Services under this Contract in compliance with all applicable laws, rules, regulations, building codes, life safety codes, and other standards and criteria designated by the City.
- 12.2 **Non-Discrimination.** Contractor shall not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 as amended; the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989 and Arizona Executive Order 2009-09 as amended, in performing this Contract and to permit the City to verify such compliance.
- 12.3 **E-Verify.** Pursuant to the provisions of the Federal Immigration and Nationalization Act and A.R.S. § 41-4401, as amended, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with all federal immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. § 23-214. The City may request verification of compliance from Contractor and any of its subcontractors under this Contract. The City reserves the right to confirm compliance. Should the City suspect or find that the Contractor or any of its subcontractors are not in compliance, the City may pursue any and all remedies allowed by law, including, but not limited to suspension of Services, termination of the Contract for breach or default, and suspension and/or debarment of the Contractor. All costs necessary for compliance shall be solely borne by the Contractor.
- 12.4 **Evidence of lawful presence in the United States.** In accordance with A.R.S. §§ 1-501, 1-502, as amended, and as a condition of entering into this Contract, a natural person shall execute an affidavit, and present one of the identification documents identified by statute, verifying their lawful presence in the U.S. Failure to execute this affidavit upon submittal of the Contract documents shall be considered nonresponsive and shall result in rejection of the submitted response and automatic cancellation of this Contract. Companies, corporations, and limited partnerships (anyone other than an individual) are not required to complete and submit this form prior to receiving a public benefit.
- 12.5 **Liens.** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the Services required under this Contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied before the City will make final payment.
- 12.6 **Notice of Action/Suit.** Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractor's performance under this Contract.
- 12.7 **Advertising.** Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the City Manager.
- 12.8 **City Logos/Marks.** Contractor shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
- 12.9 **Public Records.** Contractor acknowledges all Contract documents provided to the City may be subject to disclosure pursuant to Arizona Public Records laws.

## SECTION 13 RIGHTS/REMEDIES

- 13.1 Right of Assurance. Whenever one Party to this Contract in good faith has reason to question the other Party's intent or ability to perform, that Party questioning performance may demand that the other Party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory repudiation of the Contract.
- 13.2 Stop Work Order. The City may, at any time by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a Stop Work Order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 13.3 Non-Exclusive Remedies. The rights and remedies of the city under this Contract are non-exclusive.
- 13.4 Right of Offset. The City shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
- 13.5 Strict Performance. Failure of either Party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of goods or Services, obligations imposed by this Contract or by law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of the Contract.

## SECTION 14 GENERAL PROVISIONS

- 14.1 Modification. No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the Parties with authority to do so.
- 14.2 Delegation and Assignment. No Party may delegate, assign, sublet or transfer any of its rights, or performance under this Contract, except with the prior written consent of the other Party which shall not be unreasonably withheld. Any purported assignment or delegation in violation of this Section is void.
- 14.3 Third Party Beneficiary. Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and the Contractor, and not for the benefit of any other Party.
- 14.4 Disputes, Governing Law, Attorney Fees. This Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of Arizona, without regard to choice of law or conflicts of laws principles thereof. Any action arising out of this Contract shall be commenced and maintained in Maricopa County Superior Court, Arizona. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the U.S. District Court located in Phoenix, Maricopa County, Arizona. The prevailing Party shall be reimbursed by the other Party for all attorney fees and all costs and expenses, including but not limited to all service of process, filing fees, court and court report costs, investigative costs, and expert witness fees which are incurred in any legal proceeding whatsoever arising out of this Contract, including, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing.

- 14.5 **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.
- 14.6 **Entire Agreement.** This Contract constitutes the entire agreement of the Parties and supersedes all previous representations, written or oral, with the respect to the subject matter, goods and Services specified herein. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded by this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the drafting Party. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.
- 14.7 **Severability.** If any provision in this Contract or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 14.8 **Contract Order of Precedence.** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the following order: 1. Standard Terms and Conditions; 2. Statement or Scope of Work; 3. Solicitation, Instructions to Offerors (including other documents referenced or included); 4. Offer; 5. Fee Schedule/Price Sheet; and 6. Attachments, Addendums and Exhibits
- 14.9 **Independent Contractor.** Each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee, agent, subcontractor or subcontractor of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
- 14.10 **Ambiguities Not Held Against Drafter.** This Contract having been freely and voluntarily negotiated by all Parties and the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Contract.
- 14.11 **Waiver.** The delay or failure of either Party at any time to require performance of compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Contract shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right a waiver of any right or remedy in respect to any occurrence or event, nor shall any waiver constitute a continuing waiver.
- 14.12 **Survival.** The Parties agree that each Party shall remain obligated to the other Party under all provisions of this Contract that expressly or by their nature extend beyond and survive the expiration or termination of this Contract. This includes by way of example, but not limitation, the provisions addressing insurance, indemnification, warranties, damage, Information Technology Nondisclosure, and audit provisions.
- 14.13 **Time is of The Essence.** Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence. Contractor is providing Services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 14.14 **Non-Exclusive Contract.** Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City. Contractor acknowledges that the City may enter into agreements with other contractors to obtain the same or similar services that

are the subject of this Contract or may have its own employees perform services similar to those services contemplated by the Contract.

- 14.15 Audit of Records. Contractor, and its subcontractors that perform any work under this Contract, shall retain all books, accounts, reports, files and any and all other records relating to the Contract for six (6) years after completion of the Contract and upon written request, shall make such records available to the City for review, inspection, and audit. Contractor shall deliver all records, at no cost to the City, to the Goodyear City Hall, 190 N. Litchfield Road, Goodyear, Arizona, or to such other City facility within the City as designated by the City. If approved by City Attorney in writing, photographs, microphotographs, or other authentic reproductions may be maintained instead of original Contract Documents.
- 14.16 Audit/Billing and Expenses. The City reserves the right to request supporting documentation for all hourly amounts or reimbursable expenses charged to the City. Such records will be subject to audit at any time during the term of this Contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, Contractor will furnish to the City original invoices and payroll records to support all charges. The City reserves the right to audit all supporting evidence necessary to substantiate charges related to this Contract, both direct and indirect costs, including overhead allocations if they apply to hourly costs associated with this Contract. If requested by the City, Contractor will provide supporting records electronically in addition to a hard copy. If the audit reveals overcharge, the Contractor will reimburse the City upon demand for the amount of such overcharges plus interest thereon from the date paid by the City through the date of reimbursement. If the overcharges exceed 5% of Contractor's compensation, Contractor shall also reimburse the City for the cost of the audit. Contractor shall include this subsection in all contracts with subcontracts providing materials/Services for this Contract.
- 14.17 Cooperative Statement. This Contract shall be for the use of the City. In addition, political subdivisions, nonprofit organizations and public health institutions may in its discretion may participate (piggyback) at on this Contract if the Contractor agrees to do so.
- 14.18 Headings/Captions. Headings and captions appearing in this Contract have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of this Contract or any provision hereof.
- 14.19 Conflict of Interest. This Contract is subject to cancellation by the City, without penalty or further obligations, pursuant to the provisions of A.R.S. § 38-511, as amended.
- 14.20 Notices. Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally delivered to the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified postage prepaid and properly addressed as follows:

To Contractor:  
Jim Tourek  
IMS Manager of Client Services  
1820 W. Drake Drive, Suite #108  
Tempe, AZ 85283  
Phone: 480/839-4347 Fax: 480/839-4348

To City:  
Luke Albert  
City Traffic Engineer  
14455 W Van Buren St, Suite D101  
Goodyear, AZ 85338  
623-882-7519 office  
623-882-7941 fax  
[luke.albert@goodyearaz.gov](mailto:luke.albert@goodyearaz.gov)

Copy to:  
City Attorney  
City of Goodyear  
190 N. Litchfield Road  
Goodyear, AZ 85338

**14.21 Modification or Waiver.** Any changes, alterations, or modifications to this Contract, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Contract, shall be made by written instrument executed by all Parties and adopted in the manner by which this Contract was adopted.

**14.22 Counterparts.** This Contract may be executed by the Parties in any number of separate counterparts, each of which when executed and delivered shall be deemed an original, and all such counterparts shall together constitute one original document. All signatures need not be on the same counterpart.

**14.23 Authorization.** Each Party warrants and represents that it has full power and authority to enter into and perform this Contract and the person signing on behalf of each Party has been properly authorized and empowered to enter this Contract. Each Party further acknowledges it has read this Contract, understands it, and agrees to be bound by it.

**14.24 Electronic Signature.** The signatures on this Contract may be an original signature, or an original signature that has been replicated by photocopy, electronic or other digital means or fax.

**END OF STANDARD TERMS AND CONDITIONS**

# Detailed Scope, Budget & Schedule



IMS Infrastructure Management Services  
1620 W. Drake Drive, Suite 108, Tempe, AZ 85283  
Phone: (480) 839-4347 Fax: (480) 839-4348  
www.ims-rsl.com

**To:** Luke Alberts, City Traffic Engineer **Date:** December 22, 2015  
**From:** Jim Tourek, Manager of Client Services **Project:** City of Goodyear, AZ  
**Subject:** Scope, Budget & Schedule Document **Project No.:**

Task	Description	Activities	Deliverables
<b>Base Service Items and Activities – Project Initiation</b>			
1.	Project Initiation	<ul style="list-style-type: none"> <li>Conduct kick off meeting confirming scope, extent and content of surveys, set milestones and deliverables.</li> <li>Confirm key contacts, roles and responsibilities and project documentation.</li> <li>Identify location of key data elements such as traffic data, GIS, existing roadway inventories, historical data, and pavement management data.</li> <li>Identify deficient data and the means to obtain it.</li> <li>Provide data QA plan to City.</li> <li>Confirm phases of the work and involving methodology.</li> </ul>	Technical memo detailing scope of work, budget and deliverables.
2.	Network Referencing, Update & GIS Linkage	<ul style="list-style-type: none"> <li>Include street number &amp; block order in referencing.</li> <li>Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc.</li> <li>Confirm length &amp; width via aerial photography.</li> <li>Create survey maps for use by the RST and monitor production.</li> <li>Using the City's GIS centerline topology, develop a network roadway inventory suitable for use in the Lucity Pavement Management system.</li> <li>Link each segment to its parent GIS section.</li> <li>Obtain roadway attributes from GIS for functional class, traffic, width, length, pavement type, curb type, etc.</li> <li>Develop exceptions report for lengths that do not match GIS.</li> </ul>	<p>Survey maps and inventory for use on the project.</p> <p>Inventory spreadsheet containing all assigned GIS ID's</p>

# Detailed Scope, Budget & Schedule



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Task	Description	Activities	Deliverables
<b>Field Surveys</b>			
3.	RST Mobilization/ Calibration	<ul style="list-style-type: none"> <li>Mobilize surface distress, roughness testing equipment to project.</li> <li>Demonstrate the equipment to the City.</li> <li>Calibrate equipment.</li> </ul>	Equipment calibration results.
4.	RST Pavement Condition Data Collection	<ul style="list-style-type: none"> <li>Complete 2-pass testing on arterials and collectors while single pass testing local roads; collect ASTM distresses and attributes at 100-foot intervals on a block by block basis. IMS will survey approximately 880 lane miles (595 test miles) of roadway.</li> <li>Expansion of distresses to a modified ASTM D6433 protocol. Distresses to include longitudinal, transverse, alligator, and block cracking, raveling, bleeding, patches/potholes, rutting, roughness, and distortions.</li> <li>Laser based RST will incorporate the use of 11 lasers and rate gyroscopes, digital images, touch screen event board, and GPS acquisition.</li> <li>Dual wheel path testing collecting International Roughness Index (IRI) data.</li> </ul>	Complete 2-passes on major roadways; single on locals. Approximately 595 test miles.
5.	Network Camera Angles (3-Views) for Asset Development & Supply Video in h.264 format	<ul style="list-style-type: none"> <li>Mount 3-digital cameras on RST van for capturing multi-view video.</li> <li>Collect video tape of City's ROW network (3-views) for processing and asset database development.</li> <li>Utilize field collected video in conjunction with the development of an asset library (Ada Ramps).</li> <li>Provide City with h.264 video on a terabyte external hard drive.</li> </ul>	Process video tape of City's ROW network (3-views)  Supply City with video in h.264 format on a terabyte external hard drive.

# Detailed Scope, Budget & Schedule



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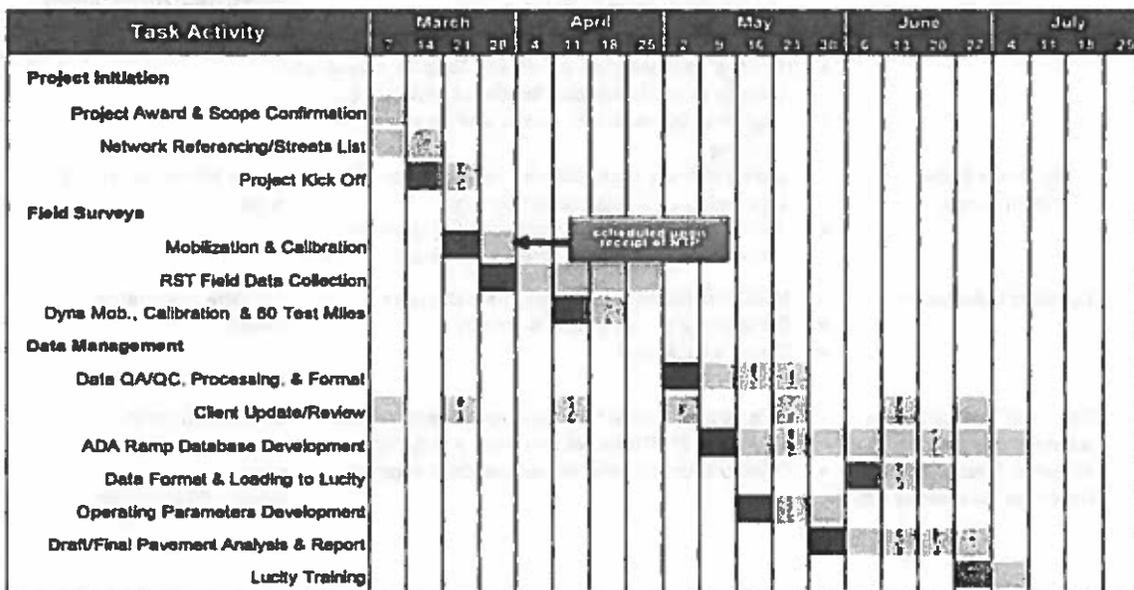
Task	Description	Activities	Deliverables
<b>Data Management</b>			
6.	Provision of Digital Images @ 25-foot Intervals (3-views)	<ul style="list-style-type: none"> <li>On all Network roadways, perform GPS and LF, RF forward-view and LR (Driver's side rearview) digital images data collection. Arterial &amp; Collector roadways will receive a 2-pass and Local roadways will receive a single pass.</li> </ul>	3-view digital images at 25-foot intervals.
7.	Pavement Condition Data QA/QC, Processing & Formatting	<ul style="list-style-type: none"> <li>For each data stream (surface distress, roughness, GPS, deflection), aggregate and process the data at 100-foot intervals.</li> <li>Develop individual index scores for surface distress and roughness as appropriate.</li> <li>Develop structural index for each roadway segment.</li> <li>Develop a pavement condition score for each section.</li> <li>Process the same data to the segment level.</li> <li>Shapefiles of the processed data.</li> <li>Develop exceptions report: lengths not matching GIS.</li> <li>Complete QA of data.</li> </ul>	<p>Excel spreadsheet of the 100 foot, sectional data, and index values containing all assigned GIS ID's.</p> <p>Shapefiles of the condition data at the 100 foot and segment levels.</p>
8.	Pavement Data Load & Configuration into Lucity Software	<ul style="list-style-type: none"> <li>Assemble data in personal geo-database(s) for loading to software by IMS.</li> <li>Convert City's historical data.</li> <li>Format and prep database (Access to SQL) for Lucity loading.</li> </ul>	Databases of ready to load condition information; configured to the City's requirements.
9.	Pavement Analysis, Budget Development & Report	<p>Following the field surveys and data processing, complete the following analysis:</p> <ul style="list-style-type: none"> <li>Present status and PCI report: Excel c/w PCI charts.</li> <li>Fix all needs analysis and budget.</li> <li>Budget driven analysis (\$/yr estimate).</li> <li>Level of service analysis (\$ to hit set target).</li> <li>Funding necessary on an annual basis to ensure an average overall pavement condition of 75, 80, or 85.</li> <li>Assemble the report for review and comment prior to finalizing.</li> </ul>	<p>Delivery of draft analysis and report as outlined.</p> <p>Final report and shape files – both hard copies (3) and in native, electronic format.</p>
10.	Lucity Onsite Software Training (2 Days)	<ul style="list-style-type: none"> <li>2-days of onsite Lucity software training will be provided by Lucity staff, topics per City.</li> <li>Additional days can be added depending upon the City's skill set and familiarity with the software.</li> </ul>	Onsite training by a Lucity expert.
11.	Dynaffect Mobilization	<ul style="list-style-type: none"> <li>Mobilize deflection testing equipment to project</li> <li>Demonstrate the equipment to the City</li> <li>Calibrate equipment.</li> </ul>	Equipment calibration results.
12.	Deflection Testing: 2-Pass testing of approx. 30 centerline miles of Arterial Roadways; selected by City	<ul style="list-style-type: none"> <li>On all arterials, collect multi-sensor deflection data at an average of 10 tests per mile using a Dynaffect.</li> <li>Develop structural index for each roadway segment.</li> </ul>	Structural index for selected Arterial roadways. (approx. 60 test miles)

# Detailed Scope, Budget & Schedule



Task	Description	Activities	Deliverables
13.	Traffic Control/ Deflection Testing (IMS to contract w/ Goodyear PD or 3rd party)	<ul style="list-style-type: none"> <li>Deflection testing requires a shadow vehicle for traffic control purposes as testing is a stop and go process that will impede traffic.</li> <li>Testing will take approximately 20 miles/day and we have accounted for 8-9 hour days.</li> <li>Goodyear PD or 3rd party entity will supply a professionally trained traffic controller and traffic control vehicle w/mounted flashing lights or an arrow-board.</li> </ul>	Traffic control services, contracted by IMS for duration of 12-14 days (approx. 20 miles/day).
14.	ADA Ramp Database Development	<ul style="list-style-type: none"> <li>Develop a Master Asset List used to define attributes.</li> <li>Utilizing the right of way digital images and GPS data, develop a detailed ADA Ramp inventory for entire roadway network.</li> <li>Note ramp condition using Good/ Fair/ Poor notations.</li> <li>Utilize RST imagery, aerial photos and in-house GIS tools to place signs in a positional-correct manner.</li> </ul>	Technical memo with City - approved MAL attributes. Personal geodatabase with asset inventory.
15.	Project Management	<ul style="list-style-type: none"> <li>Provide client with periodic e-mail updates and reports.</li> <li>Meetings to be completed on-site &amp; by conference calls</li> <li>Complete project administration and invoicing.</li> </ul>	Status reports and invoices
16.	Recurring Client Discount	<ul style="list-style-type: none"> <li>Discount provided to existing Client.</li> </ul>	

## IMS Proposed Schedule:



# Detailed Scope, Budget & Schedule



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## IMS Proposed Budget:

2015-16 City of Goodyear - Pavement Data Collection (Full Network)

Task	Activity	Quant	Units	Unit Rate	Total
<b>Project Initiation</b>					
1	Project Initiation	1	LS	\$3,260.00	\$3,250.00
2	Network Referencing & GIS Linkage	595	T-Mi	\$27.50	\$16,362.50
<b>Field Surveys</b>					
3	Mobilization/Calibration	1	LS	\$3,500.00	\$3,500.00
4	RST Pavement Condition Data Collection (2-pass Arterials & Collectors)	595	T-Mi	\$120.00	\$71,400.00
5	Video Processing for Future Asset Library (3-Views)	595	T-Mi	\$15.00	\$8,925.00
<b>Data Management</b>					
6	Provision of Digital Images @ 25-foot Intervals (3-Views & Video Log)	595	T-Mi	\$20.00	\$11,900.00
7	Pavement Data QA/QC, Processing & Format	595	T-Mi	\$15.00	\$8,925.00
8	Pavement Data Load & Configuration to Lucity	1	LS	\$8,850.00	\$8,850.00
9	Pavement Analysis, Budget Development, & Report	1	LS	9,000.00	\$9,000.00
10	Lucity Software Training (City to provide Topics to Cover)	2	DA	3,500.00	\$7,000.00
11	Dynalect Mobilization (Deflection Testing)	1	LS	\$3,000.00	\$3,000.00
12	Deflection Testing: 2-pass Arterials only	60	T-Mi	\$120.00	\$7,200.00
13	Deflection Testing Traffic Control (provided by IMS)	24	HR	\$116.00	\$2,784.00
14	ADA Ramp Database Development	595	T-Mi	\$60.00	\$35,700.00
15	Project Management	1	LS	11,033.00	\$11,033.00
16	Recurring Client Discount	1	LS	(8,666.50)	(\$8,666.50)

Thank you for considering IMS as a viable solution to your pavement management needs and we will strive to remain an asset and extension of the Goodyear staff and team. If any questions arise please do not hesitate to contact me at (480) 839-4347 or [jtourek@ims-rst.com](mailto:jtourek@ims-rst.com).

Regards,

**IMS Infrastructure Management Services**

*Jim Tourek*

Jim Tourek, West Region Manager of Client Services

**EXHIBIT B**  
**INFORMATION TECHNOLOGY NON-DISCLOSURE AGREEMENT**  
**CON 16-3432**

1. City is the owner of certain confidential information relating to its Information Technology System (“ITS”) and all related documentation, including but not limited to descriptions of the ITS or its component parts, system technical specifications, system input data, system-related know-how, system technology, and all or any of which may be derived from any of the foregoing, which is or may be classified as exempt or restriction information under the Arizona Public Records Laws (collectively “Confidential Information”). Confidential Information may include but is not limited to software, remote application access and other computer information licensed to, possessed and/or created by the City; proprietary information held by the City; and the work product of the City’s employees and agents.
2. No License/Right. Disclosure of Confidential Information to Contractor by the City shall confer no license or right, by implication or otherwise, to use the Confidential Information for any purpose other than the specific business purposes as set forth in the Contract.
3. Non-Disclosure. Contractor acknowledges the Confidential Information is a valuable, special and unique asset of the City and expressly covenants and agrees that Contractor and its subcontractors shall not disclose all or any part of the Confidential Information to any person, firm, corporation, association, or partnership without the prior written consent of the City. Contractor shall hold all Confidential Information at all times in trust and strictest confidence for the City.
4. Subcontractors. Contractor shall ensure that all of the provisions of this Exhibit are incorporated into all subcontracts and shall be responsible for any breach of this Exhibit by Contractor or its subcontractors
5. Confidentiality and Non-Use. Contractor warrants and covenants that it shall:
  - not disclose Confidential Information to any Person, without the prior written consent of the City;
  - prevent the impermissible release of the Confidential Information;
  - not retain or incorporate any Confidential Information into any database or any medium, unless required for the City’s exclusive benefit;
  - not duplicate, disclose or otherwise reveal Confidential Information unless authorized herein;
  - not use the Confidential Information to perform an illegal act;
  - not share any password or account access information with any third party;
  - not attempt in any manner, to circumvent access codes or information protection schemes or uncover security loopholes or attempt to break authentication procedures or encryption protocols;
  - not reproduce, transcribe, or disclose the Confidential Information to third parties;
  - not make, have made, use, distribute or sell for its own purposes or for any purpose other than on behalf of the City anything incorporating Confidential Information; and
  - immediately return all copies, renderings, transformations, and derivatives of such information to the City at the termination or abandonment of the Contract.
6. Exceptions to Confidentiality and Non-Use. The obligations imposed by Section 4 shall not apply, or shall cease to apply, to any Confidential Information when such Confidential Information:
  - was known by the Contractor prior to the receipt of the Confidential Information;
  - independently developed without access to Confidential Information;
  - was, or becomes through no breach of the Contractor’s obligations hereunder, known to the public;
  - is known to the Contractor from sources other than the City, under circumstances not involving any breach of any confidentiality obligation; or
  - is required to be disclosed by law or the Contract.
7. Breach. Contractor agrees in the event of a breach of this Exhibit, City shall be entitled to injunction relief and all other additional actions and remedies available at law or in equity, including damages. Noncompliance with this Exhibit is a material breach of Contract.



**ADDITIONAL REMARKS SCHEDULE**

AGENCY <b>American Insurance &amp; Investment Corp.</b>		NAMED INSURED <b>IMS Infrastructure Management Services, LLC</b> 1820 W Drake Dr Ste 108 Tempe, AZ 85283	
POLICY NUMBER <b>SEE PAGE 1</b>			
CARRIER <b>SEE PAGE 1</b>	NAIC CODE <b>SEE P 1</b>	EFFECTIVE DATE: <b>SEE PAGE 1</b>	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: **ACORD 25** FORM TITLE: **Certificate of Liability Insurance**

Description of Operations/Locations/Vehicles:  
endorsements. Umbrella follows form.  
Cancellation Notice: 30 Days, 10 days notice for non-payment of premium.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following is added to WHO IS AN INSURED (Section II):**

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

**INSURANCE (Section III) for this Coverage Part.**

**B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

**C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

**COMMERCIAL GENERAL LIABILITY**

injury" or "property damage" occurs, or the "personal injury" offense is committed.

**D. The following definition is added to DEFINITIONS (Section V):**

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**OTHER INSURANCE-ADDITIONAL INSUREDS**

This endorsement modifies insurance provided under the following:  
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**PROVISIONS**

**COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), Paragraph 4. (Other Insurance), is amended as follows:**

1. The following is added to Paragraph a. **Primary Insurance:**

However, if you specifically agree in a written contract or written agreement that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

a. The "bodily injury" or "property damage" for which coverage is sought occurs; and

b. The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense committed

subsequent to the signing and execution of that contract or agreement by you.

2. The first Subparagraph (2) of Paragraph b. **Excess Insurance** regarding any other primary insurance available to you is deleted.

3. The following is added to Paragraph b. **Excess Insurance**, as an additional subparagraph under Subparagraph (1):

That is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **AUTO COVERAGE PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><b>A. BLANKET ADDITIONAL INSURED</b></li> <li><b>B. EMPLOYEE HIRED AUTO</b></li> <li><b>C. EMPLOYEES AS INSURED</b></li> <li><b>D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b></li> <li><b>E. TRAILERS – INCREASED LOAD CAPACITY</b></li> <li><b>F. HIRED AUTO PHYSICAL DAMAGE</b></li> <li><b>G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b></li> </ul> | <ul style="list-style-type: none"> <li><b>H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT</b></li> <li><b>I. WAIVER OF DEDUCTIBLE – GLASS</b></li> <li><b>J. PERSONAL EFFECTS</b></li> <li><b>K. AIRBAGS</b></li> <li><b>L. AUTO LOAN LEASE GAP</b></li> <li><b>M. BLANKET WAIVER OF SUBROGATION</b></li> </ul> |
|---|--|

#### **A. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **B. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while

performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of SECTION IV – BUSINESS AUTO CONDITIONS:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### **C. EMPLOYEES AS INSURED**

The following is added to Paragraph A.1., **Who Is An Insured**, of SECTION II – LIABILITY COVERAGE:

## COMMERCIAL AUTO

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2) of SECTION II – LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4) of SECTION II – LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph C.1. of SECTION I – COVERED AUTOS:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

### F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

#### Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

(1) The most we will pay for "loss" in any one "accident" to a hired, rented or borrowed "auto" is the lesser of:

(a) \$50,000;

(b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

(2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

(3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

(5) This Coverage Extension does not apply to:

(a) Any "auto" that is hired, rented or borrowed with a driver; or

(b) Any "auto" that is hired, rented or borrowed from your "employee".

### G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

### H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph C.2., Limit Of Insurance, of SECTION III – PHYSICAL DAMAGE COVERAGE is deleted.

### I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., Deductible, of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

### J. PERSONAL EFFECTS

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

#### Personal Effects Coverage

We will pay up to \$400 for "loss" to wearing apparel and other personal effects which are:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Effects coverage.

**K. AIRBAGS**

The following is added to Paragraph B.3., Exclusions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. AUTO LOAN LEASE GAP**

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

**Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles**

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

**(2) Any:**

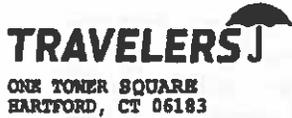
- (a) Overdue lease or loan payments at the time of the "loss";
- (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (c) Security deposits not returned by the lessor;
- (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (e) Carry-over balances from previous loans or leases.

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – BUSINESS AUTO CONDITIONS:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 00 03 13 (00)-01**

**POLICY NUMBER: (XVMPBUB-4419T31-3-15)**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

**ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER.**

**DATE OF ISSUE: 04-16-15**

**ST ASSIGN:**

WTTT  
SA-HOURE

#### **XVIII. ASSISTANCE AND COOPERATION OF THE INSURED**

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

Upon the Underwriters request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions or **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

Except as provided for in Clause II.B., expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Claims Expenses** and are not reimbursable under the Policy.

#### **XIX. ACTION AGAINST THE UNDERWRITERS**

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

#### **XX. SUBROGATION**

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Underwriters agrees to waive its rights of recovery against any client of the **Named Insured** for a **Claim** which is covered pursuant to Insuring Clause I.A. and/or I.B. of this Policy to the extent the **Named Insured** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriters, and third to the **Each Claim**

Deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

#### **XXI. ENTIRE AGREEMENT**

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

#### **XXII. VALUATION AND CURRENCY**

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

#### **XXIII. BANKRUPTCY**

Bankruptcy or insolvency of the **Insured** shall not relieve the Underwriters of their obligations nor deprive the Underwriters of its rights or defenses under this Policy.

#### **XXIV. AUTHORIZATION**

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

#### **XXV. HEADINGS**

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

**EXHIBIT B  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
IMS INFRASTRUCTURE MANAGEMENT SERVICES, L.L.C.**

[Quotation]

See following pages.

# Quotation for Professional Services



IMS Infrastructure Management Services  
1820 W. Drake Dr. Suite 104. Tempe, AZ 85283  
Phone: (480) 839-4347 Fax: (480) 839-4348  
www.ims-rst.com

To: Paul Mood, Public Works Director

Date: October 25, 2016

From: Jim Tourek, Client Services Manager

Project: Fountain Hills, AZ

Subject: Pavement Management Services

Project No:

Thank you for taking the time to review the pavement data collection services offered by IMS Infrastructure Management Services. IMS excels in pavement and asset management solutions and can provide a full suite of data collection services.

As we understand, the Town of Fountain Hills currently maintains approximately 179 centerline miles of roadway. IMS would collect data on approximately 214 test miles as we two pass test arterials roadways.

The Town does not currently utilize PMS software and was contemplating three recommended approaches for implementing a PMS; and has since selected the implementing of the Lucity PMS software (hosted by IMS) to meet all of the Town's pavement management needs. IMS collects all data in accordance with the U.S. Army Corps of Engineers data protocols, commonly referred to as ASTM D6433. The base



scope also incorporates a comprehensive pavement analysis and report including budget scenarios and prioritization plans.

Our approach, and key service differentiator, is based on three, time proven fundamentals:

**Answer the questions that are being asked** – don't over-engineer the system or make it needlessly complicated. Databases and the application of technology are meant to simplify asset management, not make it more difficult.

**Service and quality are paramount to success** – the right blend of technically correct data, condition rating, and reporting will provide the agency with a long-term, stable solution. Service to the client remains our top priority.

**Local control and communications are key** – it is important that all stakeholders understand the impacts of their decisions and have the system outputs react accordingly. We excel in making ourselves readily available.

**Services we can offer Fountain Hills include:**

- Objective roadway performance data collection including a full suite of surface distresses.
- Right of Way asset data collection and digital image and GPS coordinate data collection.
- Provision of robust software solutions and an advanced knowledge of majority of 3<sup>rd</sup> party software vendors.

**Town of Fountain Hills  
Pavement Management Services**

**Project Budget**

The detailed budget presented below is based on the IMS work plan and deliverables. It represents a realistic budget to complete the work, and we are confident we can maintain an on-time, on-budget approach to the assignment.

**Fountain Hills, AZ - 2016-21 Base Scope of Services**

Task	Activity	Quant	Units	Unit Rate	Total
<b>Project Initiation</b>					
1	Project Initiation & Kickoff Meeting	1	LS	\$3,250.00	\$3,250.00
2	Network Referencing & GIS Linkage	214	T-Mi	\$27.50	\$5,885.00
<b>Field Surveys</b>					
3	RST Mobilization/Calibration	1	LS	\$3,500.00	\$3,500.00
4	RST Field Data Collection (2-pass test Arterials; 1-pass others)	214	T-Mi	\$120.00	\$25,680.00
<b>Data Management</b>					
5	Data QA/QC, Processing, & Formatting	214	T-Mi	\$15.00	\$3,210.00
6	Develop Pavement Spreadsheet, Analysis & Report (IMS-hosted Lucity Software)	1	LS	\$9,000.00	\$9,000.00
7	10-Year Analysis and Bond Report	1	LS	\$2,500.00	\$2,500.00
8	Council Presentations	2	EA	\$3,500.00	\$7,000.00
9	Project Management	1	LS	\$4,470.00	\$4,470.00
10	New Client Discount	1	LS	(\$4,750.00)	(\$4,750.00)
11	IMSVue - City or IMS Hosted	1	LS	\$7,500.00	\$7,500.00
12	Lucity Reports w/ '17-'18 Updates (Town provides Rehabs, Inspections & GISIDs) w/MSvue Fee	1	LS	\$6,000.00	\$6,000.00
13	Lucity Reports w/ '18-'19 Updates (Town provides Rehabs, Inspections & GISIDs) w/MSvue Fee	1	LS	\$6,000.00	\$6,000.00
14	Lucity Reports w/ '19-'20 Updates (Town provides Rehabs, Inspections & GISIDs) w/MSvue Fee	1	LS	\$6,000.00	\$6,000.00
15	Lucity Reports w/ '20-'21 Updates (Town provides Rehabs, Inspections & GISIDs) w/MSvue Fee	1	LS	\$6,000.00	\$6,000.00

<b>Project Sub-Total:</b>	<b>\$91,245.00</b>
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**Software Implementation Options - IMS Recommended Lucity\***

\* as used by Glendale, Gilbert, Goodyear, Paradise Valley, Peoria, Pinal County, Scottsdale)

**SO 1. Lucity (Town Hosted, Staffed & Maintained):**

SO 1a	Assets & GIS Product Module - Install & Supply (2 Seats)	1	LS	\$13,000.00	\$13,000.00
SO 1b	Pavement Condition Data Load & GIS Integration	1	LS	\$8,000.00	\$8,000.00
SO 1c	Onsite Training & Remote Assistance (2 days/12 hours)	1	LS	\$6,500.00	\$6,500.00
				<b>Lucity SO 1 Total</b>	<b>\$27,500.00</b>
SO 1d	Annual Software Maintenance Fee: Eff. Year 2 (2 Seats)	1	LS	\$2,000.00	\$2,000.00

**Optional Service Items and Activities**

16	Dynaflect Mobilization (Deflection Testing)	1	LS	\$3,000.00	\$3,000.00
16a	Deflection Testing: 2-pass Arterials only	70	T-Mi	\$120.00	\$8,400.00
16b	Deflection Testing Traffic Control (provided by City; otherwise \$116/hr.)	24	HR	\$0.00	\$0.00
17	Provision of Digital Images @ 25-foot Intervals (3-Views & Video Log)	214	T-Mi	\$20.00	\$4,280.00
18	Crossfall, Radius of Curvature, & Grade	214	T-Mi	\$10.00	\$2,140.00
19	Right of Way Assets Data Collection (GPS & Camera Configuration)	214	T-Mi	\$15.00	\$3,210.00
19a	Sign & Support Database Development	214	T-Mi	\$100.00	\$21,400.00
19b	Sidewalk Database Development	214	T-Mi	\$50.00	\$10,700.00
19c	ADA Ramp & Obstructions Database Development	214	T-Mi	\$60.00	\$12,840.00
19d	Curb & Gutter Database Development	214	T-Mi	\$50.00	\$10,700.00
19e	Pavement Striping/Marking Database Development	214	T-Mi	\$60.00	\$12,840.00
20	Nighttime Retro-reflectivity- All Signs (100% Network)	214	T-Mi		(need #19 & 19a) Quote w/request
21	SST Mobilization for Detailed Sidewalk Survey	1	LS		(need #19 & 19b-c) Quote w/request
22	SST Enhanced Field Survey of Sidewalks and ADA Ramps	1	LS		(need #19 & 19b-c) Quote w/request
23	Sidewalk & ADA Ramp Distress Data Processing	1	LS		(need #19 & 19b-c) Quote w/request
24	Next Scheduled Pavement Survey 2019-2020 (same Scope as '16-'17 w/ Same Mileage	1	LS	\$61,745.00	\$61,745.00

**Town of Fountain Hills  
Pavement Management Services**

Fountain Hills, AZ - 2019-20 Base Scope of Services Breakout		IMS to Proceed with Letter of Authorization Only.			
Task	Activity	Quant	Units	Unit Rate	Total
<b>Project Initiation</b>					
1	Project Initiation & Kickoff Meeting	1	LS	\$3,250.00	\$3,250.00
2	Network Referencing & GIS Linkage	214	T-MI	\$27.50	\$5,885.00
<b>Field Surveys</b>					
3	RST Mobilization/Calibration	1	LS	\$3,500.00	\$3,500.00
4	RST Field Data Collection (2-pass test Arterials; 1-pass others)	214	T-MI	\$120.00	\$25,680.00
<b>Data Management</b>					
5	Data QA/QC, Processing, & Formatting	214	T-MI	\$15.00	\$3,210.00
6	Develop Pavement Spreadsheet, Analysis & Report (MS-hosted Lucity Software)	1	LS	\$9,000.00	\$9,000.00
7	10-Year Analysis and Bond Report	1	LS	\$2,500.00	\$2,500.00
8	Council Presentations	2	EA	\$3,500.00	\$7,000.00
9	Project Management	1	LS	\$4,470.00	\$4,470.00
10	Recurring Client Discount	1	LS	(\$4,750.00)	(\$4,750.00)
11	IMSVue - Annual Maintenance Fee	1	LS	\$2,000.00	\$2,000.00

<b>Project Sub-Total:</b>	<b>\$61,745.00</b>
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Thank you for considering IMS as a viable solution to your pavement management needs and we will strive to become an asset and extension of the Fountain Hills' staff and team. If any questions arise please do not hesitate to contact me at (480) 839-4347 or [jtoure@ims-rst.com](mailto:jtoure@ims-rst.com).

Regards,

**IMS Infrastructure Management Services, LLC**



**Jim Tourek**  
West Region Client Services Manager



# TOWN OF FOUNTAIN HILLS

## TOWN COUNCIL AGENDA ACTION FORM

**Meeting Date:** 12/1/2016

**Meeting Type:** Regular Session

**Agenda Type:** Regular

**Submitting Department:** Administration

**Staff Contact Information:** Craig Rudolphy, Finance Director, 480-816-5162, crudolphy@fh.az.gov

**Strategic Planning Goal:** Not Applicable (NA)

**Operational Priority:** Not Applicable (NA)

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**REQUEST TO COUNCIL** (Agenda Language): CONSIDERATION of ORDINANCE 16-13 AND RESOLUTIONS 2016-36 and 2016-37 amending and restating Chapter 3, Article 3-3 of the Town Code as well as amending the Town's Procurement Policy.

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**Applicant:**

**Applicant Contact Information:**

**Property Location:**

**Related Ordinance, Policy or Guiding Principle:**

**Staff Summary** (background): At the November 21, 2013, Council meeting, Council approved Ordinance 13-04 and Resolution 2013-45 amending and restating the Town Code as well as the Town's Procurement Policy. Since that time, significant progress has been made in adhering to the requirements of the Code as well as making the procurement process as efficient as possible. Nevertheless, certain provisions now are not considered 'best practices' and should be altered to allow staff more flexibility in the performance of their duties. One such change increases the Department Head's ability to select professional services by expanding the definition of professional services and by increasing the threshold of direct selection from \$10,000 to one-half the amount permitted by A.R.S. Title 34, Chapter 6, specifically \$125,000. In addition, the threshold for informal procurements is raised to \$10,000 (from \$5,000) for open market purchases and to \$50,000 (from \$30,000) for small purchases not requiring Council approval.

**Risk Analysis** (options or alternatives with implications): Not increasing the limits and definition for direct selection of professional services will require Department Heads to spend more time to perform duties of their position. If the informal procurements threshold is not increased, staff will spend more time in the procurement arena as opposed to the actual duties of their position.

**Fiscal Impact** (initial and ongoing costs; budget status):

**Budget Reference** (page number):

**Funding Source:** NA

If Multiple Funds utilized, list here:

**Budgeted; if No, attach Budget Adjustment Form:** NA

**Recommendation(s) by Board(s) or Commission(s):**

Staff Recommendation(s): Approve

List Attachment(s): Chapter 3, Article 3-3 of the Town Code; Town Procurement Policy

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**SUGGESTED MOTION** (for Council use): Move to approve ORDINANCE 16-13 AND RESOLUTIONS 2016-36 and 2016-37.

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Prepared by:

NA 8/25/2015

Director's Approval:

  
Craig Rudolph, Finance Director 11/22/2016

Approved:

  
Grady E. Miller, Town Manager 11/22/2016

**RESOLUTION 2016-37**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED “AMENDMENTS TO TOWN CODE CHAPTER 3, ARTICLE 3, PROCUREMENT, DATED DECEMBER 1, 2016.”

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. That certain document entitled “Amendments to Town Code, Chapter 3, Article 3, Procurement, dated December 1, 2016,” of which one paper copy and one electronic copy maintained in compliance with ARIZ. REV. STAT. § 44-7041 are on file in the office of the Town Clerk and open for public inspection during normal business hours, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, Arizona, December 1, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**      **ATTESTED TO:**

\_\_\_\_\_  
Linda M. Kavanagh, Mayor

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Grady E. Miller, Town Manager

\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

## **ORDINANCE 16-13**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE “AMENDMENTS TO TOWN CODE CHAPTER 3, ARTICLE 3, PROCUREMENT, DATED DECEMBER 1, 2016” BY REFERENCE AND AMENDING THE TOWN OF FOUNTAIN HILLS TOWN CODE, CHAPTER 3, ARTICLE 3, BY REVISING PROVISIONS RELATED TO PROCUREMENT.

**WHEREAS**, the Town of Fountain Hills Town Code (the “Town Code”) provides policy direction for procurement of goods and services in Chapter 3, Article 3 thereof (the “Procurement Code”); and

**WHEREAS**, the Mayor and Council of the Town of Fountain Hills (the “Town Council”) desires to modify the Procurement Code to provide for, among other things: (i) an expanded definition of “professional services” that may be procured without formal competition; and (ii) increased authority for the Town Manager to execute contracts and to modify the policies adopted by the Council relating to the various procurement methods and processes (the “Procurement Policy”); and

**WHEREAS**, the Town Council, through these amendments to the Procurement Code and Procurement Policy, desires to increase efficiency of Town purchasing in a manner that is in the best interests of the Town.

**NOW, THEREFORE, BE IT ORDAINED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The document known as the “Amendments to Town Code Chapter 3, Article 3, Procurement dated December 1, 2016”, of which one paper copy and one electronic copy maintained in compliance with ARIZ. REV. STAT. § 44-7041 are on file in the office of the Town Clerk, which document was made a public record by Resolution 2016-36 of the Town of Fountain Hills, Arizona (the “Procurement Amendments”), is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 3. The Town Code, Chapter 3 (Administration), Article 3-3 (Procurement), is hereby deleted in its entirety and replaced with the Procurement Amendments.

SECTION 4. Any person who fails to comply with any provision of the Procurement Amendments shall be subject to civil and criminal penalties as set forth in Section 1-8-1 of the Town Code, including civil penalties of not more than \$250 base fine. Criminal penalties shall constitute a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, December 1, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:            ATTESTED TO:**

\_\_\_\_\_  
Linda M. Kavanagh, Mayor

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Grady E. Miller, Town Manager

\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

**Amendments  
To Town Code  
Chapter 3, Article 3  
Procurement**

**December 1, 2016**

**Article 3-3**

**PROCUREMENT**

**PARTS:**

- Part I           GENERAL PROVISIONS**
- Part II          ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES**
- Part III         BIDDING PROCEDURES**

**Part I GENERAL PROVISIONS**

**Sections:**

- 3-3-1           Purposes**
- 3-3-2           Policies**
- 3-3-3           Application; Exclusions**
- 3-3-4           Definitions**
- 3-3-5           Budgeting**
- 3-3-6           Procurement Agent**
- 3-3-7           Procurement by Dollar Value; Execution**
- 3-3-8           On-line Bidding**
- 3-3-9           Purchase Orders**
- 3-3-10          (Reserved)**

**Section 3-3-1 Purposes**

The purposes of this Article are to:

- A.     Establish standard policies and practices for the Procurement of Materials and Services and permit the continued development of Procurement policies and practices.
- B.     Serve as an aid in providing all Materials and Services at the appropriate time, place, quantity, purpose and Price to meet the operational requirements of the Town.
- C.     Ensure the fair and equitable treatment of all Persons who participate in the Procurement system of the Town and foster effective broad-based competition within the free enterprise system.

**Section 3-3-2 Policies**

The Town shall procure all Materials and Services deemed necessary for the delivery of quality service to its residents using competitive Bids, Proposals, Vendor quotations or direct purchases. A complete history of each purchase of Materials or Services will be maintained through the use of purchase requisitions, purchase orders, check requests, petty cash vouchers and any other appropriate forms as authorized by this Article and as set forth in the Procurement Policy. Every

effort will be made to obtain all Materials and Services at the most economical prices available. All Procurement Contracts shall be drawn by or under the supervision of the Town Attorney.

**Section 3-3-3 Application; Exclusions**

- A. This Article shall apply to every expenditure of public monies by the Town relating to Procurement of Materials and Services, except as otherwise specified in this Article. Nothing in this Article shall prevent any Town department from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. In the event of a conflict between the terms of this Article and the terms of any federal or state grant, the terms of any such grant shall govern.
  
- B. This Article shall not apply to the following:
  - 1. Contracts between the Town and the federal government, the State of Arizona and political subdivisions of the State of Arizona.
  - 2. Contracts for expert services, if the purpose of such services is to provide for Professional Services relating to an existing or probable lawsuit in which the Town is or may become a party or to Contracts for special investigative Services for law enforcement or administrative investigation purposes.
  - 3. Agreements negotiated by legal counsel representing the Town in settlement of pending litigation or threatened litigation.
  - 4. Development agreements, as defined in ARIZ. REV. STAT. § 9-500.05, as amended.
  - 5. Contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated in connection with a Contract for purchase or sale of real property.

**Section 3-3-4 Definitions**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Best Interests of the Town” means advantageous to the Town.
  
- B. “Bid” means a price-based Proposal that is submitted in response to an Invitation for Bids.
  
- C. “Bid or Proposal Guarantee” means a form of security that indemnifies the Town against a successful bidder’s failure to execute the Contract documents and proceed with performance.

## Fountain Hills Town Code

- D. “Bid Opening” means the date and time set forth in the Solicitation for opening of sealed Bids.
- E. “Business” means any Person authorized to do business in the State of Arizona.
- F. “Change Order” means a written order signed by an authorized agent of the Town that directs the Contractor to make changes that are authorized by the Town, but which does not change the Contract amount by more than as authorized in Section 3-3-6 below.
- G. “Closing Date” means the date and time set forth in a Solicitation for the receipt of Bids or Proposals by the Town, after which no Bid or Proposal shall be considered.
- H. “Confidential Information” means that portion of a Bid, Proposal, offer, Specification or protest that contains information that the Person submitting the information believes should be withheld, provided (i) such Person submits a written statement advising the Town of this belief at the time of the submission and (ii) the information is so identified wherever it appears.
- I. “Construction” means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, but does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
- J. “Contract” means all types of Town agreements, regardless of what they may be called, for the Procurement of Materials and Services, the demolition or Construction of public facilities, or the acquisition and disposal of real and personal property.
- K. “Contractor” means any Person having a Contract with the Town.
- L. “Cooperative Purchasing” means Procurement conducted by, or on behalf of, more than one public Procurement unit.
- M. “Data” means documented information, regardless of form or characteristic.
- N. “Days” means calendar days unless otherwise specified.
- O. “Debarment” means disqualification by the Procurement Agent of a Vendor to receive the award of a Contract with the Town for a specified period of time, not to exceed three years, commensurate with the seriousness of the offense causing the disqualification, which may result from misconduct or failure or inadequacy of performance.
- P. “Emergency” means a threat to the public health, welfare, property or safety.
- Q. “Employee” means an individual drawing a wage or a salary through the payroll process of the Town, whether elected or not.

## Fountain Hills Town Code

- R. “Exempt Construction” means:
1. For any building, structure, addition or alteration, Construction with a total cost of work that does not exceed the limitations in ARIZ. REV. STAT. § 34-201(C).
  2. For any street, road, bridge, water or sewer work, Construction with a total cost of work that does not exceed the limitations in ARIZ. REV. STAT. § 34-201(D).
  3. For recreational projects, including trails, playgrounds, ball parks and other similar facilities, excluding buildings, structures, building additions and alterations to buildings, structures and building additions, when such improvements are completed by workers provided by a non-profit organization, Construction with a total cost of the work that does not exceed the limitations in ARIZ. REV. STAT. § 34-201(F).
  4. Contributions to finance public infrastructure made pursuant to a development agreement if such contribution to a single development does not exceed the limitations in ARIZ. REV. STAT. § 34-201(G)
- S. “Interested Party” means an actual or prospective bidder or Offeror whose economic interest may be affected substantially and directly by the issuance of a Solicitation, the award of a Contract, or by the failure to award a Contract. Whether an actual or prospective bidder or Offeror has an economic interest will depend upon the circumstances of each case.
- T. “Invitation for Bids” means all documents including those attached or incorporated by reference, utilized for soliciting Bids in accordance with Section 3-3-20 below.
- U. “Materials” means all personal property, including equipment, supplies, printing, insurance and leases of personal property.
- V. “Offeror” or “Respondent” means any Person that responds to an Invitation for Bids, Request for Proposals, Solicitation, offer, or any other invitation or request by which the Town invites a Person to participate.
- W. “Open Market Purchase” means procedures used for Procurement of Materials and Services readily available to the general public on the open market which, by their nature, are subject to competition from multiple competing Vendors.
- X. “Payment Bond” means a form of security required to be provided by a Contractor for the protection of claimants supplying labor and/or Materials to the Contractor or its Subcontractors.
- Y. “Performance Bond” means a form of security provided by a Contractor that secures the Contractor’s obligation to properly complete its work in accordance with the Contract.

## Fountain Hills Town Code

- Z. “Person” means any individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity, governmental entity, union, committee, club, other organization or group of individuals. It includes a trustee, receiver or similar representative.
- AA. “Price” means the total expenditure for a defined quantity of a Material or Service.
- BB. “Procurement” means the purchasing, renting, leasing or otherwise obtaining any Material or Service. The term includes all functions that pertain to the obtaining of any Material or Service, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of Contract administration.
- CC. “Procurement Agent” means the Town Manager or authorized designee.
- DD. “Procurement Policy” means the administrative policy created by the Town Manager to assist with the implementation of this Article.
- EE. “Professional Services” means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the Person(s) rendering the services are of primary importance. Professional Services shall include, but are not limited to, services provided by architects, attorneys, accountants, financial advisors, construction and project managers, dentists, design professionals, planning professionals, engineers, assayers, geologists, land surveyors, mediators, human resources consultants, plan review and/or inspection professionals, translators, election services, materials testing firms, water quality testing firms, fee consultants, revenue study consultants, physicians, nurses, psychologists, teachers and facilitators, veterinarians and health care providers, that provide a combination of professional and paraprofessional services or any other professions and services defined as Professional Services by state law. Professional Services do not include Construction or Exempt Construction.
- FF. “Proposal” means a written offer, solicited or unsolicited, for consideration as a basis for awarding or modifying a Contract.
- GG. “Request for Proposal” means all documents, including those attached or incorporated by reference, utilized for soliciting Proposals in accordance with Section 3-3-21 below.
- HH. “Request for Qualifications” means all documents, including those attached or incorporated by reference, utilized for soliciting qualifications-based Proposals in accordance with Section 3-3-23 below.
- II. “Responsible Bidder” or “Responsible Offeror” means a bidder or Offeror who has (i) the capability to fully perform the Contract requirements and (ii) the reliability that will ensure good faith performance.
- JJ. “Responsive Bidder” or “Responsive Offeror” means a bidder or Offeror who has submitted a Bid or Proposal that conforms in all material aspects to the Solicitation.

## Fountain Hills Town Code

- KK. “Service” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. This term does not include “Professional Services” provided by those Persons as defined in this Section.
- LL. “Solicitation” means an Invitation for Bids, a Request for Proposals, a Request for Qualifications or any other invitation or request by which the Town invites a Person to participate in a Procurement.
- MM. “Specification” means any description of the physical characteristics, functional characteristics, or the nature of a Material or Service item. The term may include a description of any requirements for inspecting, testing, or preparing a Material or Service item for delivery.
- NN. “Subcontractor” means a Person that contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the Town.
- OO. “Suspension” means an action taken by the Procurement Agent disqualifying a Person or entity from participation in Town Procurement.
- PP. “Technical Registrant” means a Person who provides any of the Professional Services listed in ARIZ. REV. STAT., Title 32, Chapter 1, as amended, and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects.
- QQ. “Town” means the Town of Fountain Hills, an Arizona municipal corporation.
- RR. “Vendor” means any Person operating a Business that has, or proposes to, provide a Material or Service to the Town.

### **Section 3-3-5 Budgeting**

- A. Procurements shall be contracted for or made only where sufficient funds have been budgeted in the year in which funds have been appropriated.
- B. Budgeted line items specifically identifying one-time operational or recurring Materials or Services that have been approved by the Council in the review and adoption of the annual Town budget, and for which an award is within the allocated expenditure set forth in the budget, may be approved by the Procurement Agent without further Council approval. Awards that exceed the allocated expenditure or deviate from the identified description and/or scope shall require Council approval.

**Section 3-3-6 Procurement Agent**

The Procurement Agent shall (i) serve as the Contract administrator for the Town and as such shall supervise the execution and completion of all Contracts entered into by or on behalf of the Town and (ii) have general supervision, responsibility and authority to:

- A. Procure, contract for and execute agreements in any amount less than \$50,000.00 for Materials and Services, including rentals, Service agreements, and leases needed by any Town department, in accordance with this Article.
- B. Approve and sign Change Orders to Contracts authorized by the Council in an amount equal to the lesser of 10% of the Contract amount or \$50,000.00; provided that Change Orders that increase the Contract amount shall be approved by a Contract amendment in the form approved by the Town Attorney.
- C. Establish and amend the Procurement Policy and all regulations, forms, procedures and rules necessary and proper to implement the provisions of this Article. Modifications to the Procurement Policy shall be made with the concurrence of the Town Attorney.
- D. Have the authority to suspend or debar Vendors.
- E. Centralize Procurement, consistent with this Article, by which Materials and Services for all Town departments are purchased.
- F. Inform Town Employees and contractors of the ethical standards for public contracting.
- G. Designate another representative of the Town to have the authority to perform any or all of the above tasks.

**Section 3-3-7 Procurement by Dollar Value; Execution**

- A. Any purchase not exceeding \$50,000.00 may be made by the Procurement Agent in accordance with this Article and the Procurement Policy adopted pursuant to this Article. Contract requirements shall not be artificially divided so as to create multiple purchases of lesser amounts. Except as set forth in Subsections 3-3-5(B) and 3-3-6(B) above, any purchase exceeding \$50,000.00 shall be authorized by the Council. When it is advantageous to the Town, annual Contracts should be initiated for Services and Materials regularly purchased.
- B. The Procurement Agent may sign Contracts (1) for purchases not exceeding \$50,000.00 without Council approval and (2) in any amount after such Contract has been approved by the Council either as part of the annual budget or as a separate item. The Mayor may sign any Contracts of any amount as long as such Contracts have been approved by the Council.

**Section 3-3-8 On-line Bidding**

- A. If the Procurement Agent determines that electronic, on-line bidding is in the Best Interests of the Town and the competitive Procurement process is facilitated thereby, the Procurement Agent may use on-line bidding to obtain Bids electronically for the purchase of Materials and Services.
- B. An on-line bidding Solicitation must designate an opening date and time.
- C. The Closing Date and time for an on-line Solicitation may be fixed or remain open depending on the structure of the item being bid on-line. Information regarding the Closing Date and time must be included in the Solicitation. At the opening date and time, the Procurement Agent must begin accepting on-line Bids and must continue accepting Bids until the Bid is officially closed.
- D. All on-line Bids must be posted electronically and updated on a real-time basis.
- E. The Procurement Agent may:
  - 1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the Solicitation.
  - 2. Prequalify bidders and allow only those bidders who are prequalified to submit Bids on-line.
- F. All Bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws and timelines that govern Bids received through the sealed Bid process.
- G. All remedies available to the Town and to bidders through the sealed Bid process under this Article are also available to the Town and to bidders in an on-line bidding process.

**Section 3-3-9 Purchase Orders**

The Procurement Agent shall provide forms of purchase orders that shall be used for the purchase of all Materials and Services for or on behalf of the Town. Open purchase orders may be utilized for the routine purchase of regularly-supplied items, provided that an open purchase order shall be limited to a single source and shall not be valid for more than \$10,000 in the aggregate.

**Section 3-3-10 (Reserved)**

**Part II ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES**

**Sections:**

- 3-3-11 Ethical Standards**
- 3-3-12 Ethical Violations**
- 3-3-13 Unauthorized Purchases; Violation, Liability, Enforcement**
- 3-3-14 (Reserved)**
- 3-3-15 (Reserved)**

**Section 3-3-11 Ethical Standards**

It is the policy of the Town for Employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. These standards apply to Town Employees internally as well as when interacting with citizens and Vendors. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to providing the Town with Materials or Services. To further this policy, the Town has promulgated ethical standards as set forth below. The Procurement Agent is authorized to take steps to ensure compliance with the following standards:

- A. It is an affirmative obligation for Town Employees to perform their responsibilities in such a manner to ensure fair competitive access to governmental Procurement by responsible Vendors.
- B. No Employee of the Town shall engage in acts that, in the reasonable judgment of the Procurement Agent, would result in a loss of confidence in the integrity of the Town's Procurement operation. Such acts include, but are not limited to (1) receipt of gifts or services of more than a nominal value from a prospective Vendor, (2) statements to a Vendor that it will be awarded the Contract based on personal knowledge or relationships with Town Employees without an evaluation of its submittal, (3) failure of a Town Employee sitting on a review committee to disclose any prior or current business or financial relationship with a proposed Vendor, (4) criticism of one Vendor to another Vendor who is competing for the same Procurement prior to Bid or Proposal award or (5) any acts similar to those outlined in clauses (1) through (4) of this Subsection. For purposes of this Article, "nominal value" is defined as \$25.00 or less from any single party during any single calendar year.
- C. Town Employees responsible for participation in Procurement by virtue of their positions shall take reasonable efforts to ensure that Contractors doing business with the Town are expected to observe these same ethical standards. Violation of these standards shall constitute grounds for termination of a Contract with the Town and Debarment of the Contractor from doing any further business with the Town.

**Section 3-3-12 Ethical Violations**

- A. In addition to any applicable state laws, it is a violation of this Article:
1. For any Person to attempt to or influence any Town Employee to violate the provisions of ethical conduct set forth in this Article.
  2. For any Person preparing Specifications or plans pursuant to this Article or any policy or procedure of the Town to receive any direct pecuniary benefit from the utilization of such plans or Specifications, other than compensation owed for preparation of the Specifications or plans.
  3. For any Employee or agent acting on behalf of the Town to directly or indirectly participate in or benefit or receive any pecuniary benefit from a Procurement in violation of state or federal law.
  4. For any Person to offer, give or agree to give any Employee or former Employee of the Town or for any Employee or former Employee of the Town to solicit, demand, accept, or agree to accept from another Person, any valuable thing or valuable benefit that would not accrue in the performance of his official duties or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing content of any Specification or Procurement standard, rendering of advice, investigation, auditing or in any advisory capacity in any proceeding or application request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement of a Contract or subcontract, or to any Solicitation or Proposal therefore. No action taken for violations of this Subsection shall be construed to preclude criminal prosecution of an Employee or former Employee or any other Person under the provisions of state or federal law.
  5. For any payment, gratuity or offer of employment to be made by or on behalf of a Subcontractor under a Contract to the prime Contractor or higher tier Subcontractor or any Person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a Contract with the Town and Debarment of the Vendor from doing any further business with the Town. This information shall be included as a term and condition of all Town Contracts.
  6. For a Person to be retained, or to retain a Person, to solicit or secure a Town Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide established sales and brokerage agencies for the purpose of securing business.
  7. For any Employee who is participating directly or indirectly in a Procurement process to become the Employee of any Person under Contract with the Town

## Fountain Hills Town Code

concerning any matters that the Employee participated in during the same Procurement process for a period of twelve months following his employment with the Town.

8. For any Employee or former Employee of the Town to disclose or use Confidential Information acquired by the Employee in the performance of his official duties for the actual or anticipated pecuniary benefit of any Person.
- B. It is no defense to a violation of this Section that the Employee to whom a benefit or offer of employment was made, or agree to be made, was not qualified to act in the desired manner.
- C. An Employee or Person may violate this Section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation. The Person's state of mind shall only be considered in imposing the penalty for such violation.

### **Section 3-3-13 Unauthorized Purchases; Violation, Liability, Enforcement**

- A. Except as provided in this Article, it shall be improper for any Town Employee to order the purchase of Materials or Services or to attempt to enter into Contracts within the purview of this Article other than through the Procurement Agent. Purchase Orders or Contracts made contrary to the provisions hereof shall not be approved by the Procurement Agent and the Town shall not be bound thereby. Further, the Procurement Agent may impose discipline on Employees who violate this Article in accordance with the Town's codes and personnel administrative regulations.
- B. A Person who knowingly contracts for or purchases any Materials, Services or Construction in a manner contrary to the requirements of this Article violates the ethical standards contained in this Article shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney's fees and damages arising out of the violation. Further, the Procurement Agent may impose discipline on Employees who (1) contracted for or purchased any Materials, Services of Construction in a manner contrary to the requirements of this Article or (2) engaged in violations of the provisions set forth in Sections 3-3-11 and 3-3-12 above in accordance with the Town's codes and personnel administrative regulations.
- C. The Town Attorney shall assist the Procurement Agent or authorized designee in enforcing the provisions of this Article.

### **Sections 3-3-14 – 3-3-15 (Reserved)**

## **Part III BIDDING PROCEDURES**

### **Sections:**

<b>3-3-16</b>	<b>Applicability</b>
<b>3-3-17</b>	<b>Public Notice</b>
<b>3-3-18</b>	<b>Bid or Proposal Guarantee</b>
<b>3-3-19</b>	<b>Confidential Information</b>
<b>3-3-20</b>	<b>Invitation for Bids</b>
<b>3-3-21</b>	<b>Request for Proposals</b>
<b>3-3-22</b>	<b>Withdrawal or Cancellation of Bids or Proposals</b>
<b>3-3-23</b>	<b>Retention of Professional Services; Requests for Qualifications</b>
<b>3-3-24</b>	<b>Construction Contracts</b>
<b>3-3-25</b>	<b>Emergency Procurements</b>
<b>3-3-26</b>	<b>Sole Source Procurement</b>
<b>3-3-27</b>	<b>Cooperative Purchasing</b>
<b>3-3-28</b>	<b>Protests; Informal and Formal</b>
<b>3-3-29</b>	<b>Debarments and Suspensions</b>
<b>3-3-30</b>	<b>Acceptance of Work Completed</b>
<b>3-3-31</b>	<b>Attestation of Contracts by Town Clerk</b>

### **Section 3-3-16 Applicability**

The bidding process set forth in this Article shall be utilized for all purchases not designated as eligible for purchases under petty cash, Open Market Purchase or small purchase in the Procurement Policy; provided, however, that the bidding process set forth in this Part may be supplemented by the Procurement Policy. Informal purchases (petty cash, Open Market Purchase and small purchases) shall be governed solely by the Procurement Policy; the Procurement Policy shall also designate the process for determining which bidding process will be required for all Procurements.

### **Section 3-3-17 Public Notice**

- A. Public notice of Invitations for Bids, Requests for Proposals or Requests for Qualifications shall be in a manner that is reasonable in the judgment of Procurement Agent given the commercial context of the Solicitation. The advertisement shall specifically state the character of the Town purchase contemplated. Notice may be given in any publication that is reasonably available to prospective bidders in the judgment of Procurement Agent. For purposes of this Article, reasonable notice shall be defined as (1) not less than five business days for an Invitation for Bids and (2) not less than 21 Days for a Request for Proposals or a Request for Qualifications; provided, however, that any such notice shall comply with the ARIZ. REV. STAT. § 9-812 and 34-201, as amended.
- B. Public notice shall also be provided in a manner that is reasonable in the judgment of the Procurement Agent in publications of limited circulation, with the intent to encourage

## Fountain Hills Town Code

participation of as many qualified Businesses as reasonably possible, including disadvantaged business enterprise firms.

### **Section 3-3-18 Bonds**

- A. The Procurement Agent may require a Bid or Proposal Guarantee be submitted with any Bid or Proposal. The Procurement Agent may waive the Bid or Proposal Guarantee requirement if he finds that the requirement will have a significant negative impact on the ability of disadvantaged business enterprises to compete for Town purchases or if he determines, in his reasonable discretion, that such waiver is in the Best Interests of the Town. The Procurement Agent shall require a Bid or Proposal Guarantee for Construction Contracts pursuant to ARIZ. REV. STAT. § 34-201(A), as amended.
- B. Performance Bonds and Payment Bonds shall be submitted prior to execution of any Contract for Construction or Exempt Construction.

### **Section 3-3-19 Confidential Information**

- A. If a Person believes that a Bid, Proposal, Offer, or Specification contains information that should be withheld from public disclosure, a statement advising the Procurement Agent of this belief and the basis for exemption from such disclosure shall accompany this submission and the information shall be specifically identified wherever it appears.
- B. The Procurement Agent shall make a determination whether the information shall be subject to public disclosure and shall advise in writing the party submitting the information of the final determination.
- C. All information contained in the Proposals shall be deemed as temporarily exempt from public disclosure based on the Town's need to avoid disclosure of contents prejudicial to competing Offerors during the process of negotiation. The Proposals shall not be open for public inspection until after Contract award. Except to the extent the Offeror designates, and the Town concurs, trade secrets or other proprietary Data contained in the Proposal shall remain exempt from public disclosure only to the extent permitted by law.

### **Section 3-3-20 Invitation for Bids**

- A. When the Procurement Policy directs that an Invitation for Bids shall be utilized for Procurement, the Invitation for Bids shall include Specifications and all contractual terms and conditions applicable to the Procurement.
- B. Bids shall be by sealed Proposals only and under such regulations as may be prescribed by the Procurement Agent. The Procurement Agent shall have the power to reject any or all Bids, and to advertise for Bids again.

## Fountain Hills Town Code

- C. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each Bid, and such other relevant information as the Procurement Agent deems appropriate, together with the name of each bidder, shall be recorded; the record of Bids shall be open to public inspection immediately, but individual Bids shall be open to public inspection only after the Contract is awarded.
- D. Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based upon the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the Bid Price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in Bid evaluation that is not set forth in the Invitation for Bids, this Article or the Procurement Policy.
- E. Correction or withdrawal of inadvertently erroneous Bids before or after Bid Opening, or cancellation of awards or Contracts based on such Bid mistakes, may be permitted where appropriate at the Town's sole discretion. After Bid Opening, no changes in Bid Prices or other provisions of Bids prejudicial to the interest of the Town or fair competition shall be permitted. In lieu of Bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its Bid in the sole discretion of the Town and only if one of the following occurs:
1. The mistake is clearly evident on the face of the Bid document but the intended correction Bid is not similarly evident.
  2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of Bids, or to cancel award or Contracts based on Bid mistakes, shall be supported by a written determination made by the Procurement Agent.
- F. The Contract shall be awarded to the Offeror that is determined to be a Responsive Bidder and a Responsible Bidder and whose Bid (1) is the lowest cost and (2) meets the requirements and criteria set forth in the Invitation for Bids. The amount of applicable transaction privilege or use tax of the Town shall be included in the Bid prices and shall not be a factor in determining the net lowest Bid. In the event the lowest responsive and responsible Bid for a Construction project exceeds available funds as certified by the Procurement Agent, and such Bid does not exceed such funds by more than five percent, the Procurement Agent is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the Bid Price with the low Responsive Bidder and Responsible Bidder in order to bring the Bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation for Bids.

## Fountain Hills Town Code

- G. When it is considered impractical to initially prepare a purchase description to support an award based on Price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first Solicitation.
- H. All Vendors and contractors must be in compliance, at the time set for opening the Bid, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

### **Section 3-3-21 Request for Proposals**

- A. When the Procurement Agent determines that the use of an Invitation for Bids is either not practicable or not advantageous to the Town, a Contract may be entered into by use of the competitive sealed Proposals or other approved methods that are defined as a Request for Proposals.
- B. Proposals shall be solicited through a written Request for Proposals.
- C. Proposals shall be submitted at the time and place designated in the Request for Proposals.
- D. As provided in the Request for Proposals, discussions may be conducted with Responsible Offerors who submit Proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of Proposals and such revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from Proposals submitted by competing proposers.
- E. The award shall be made to the Offeror that is determined to be a Responsible Offeror and a Responsive Offeror whose Proposal is determined, in writing, to be the most advantageous to the Town and best meets the overall needs of the Town taking into consideration only the evaluation factors set forth in the Request for Proposals. The Request for Proposals shall state the relative importance of Price and other evaluation factors; specific numerical weighing is not required. The amount of applicable transaction privilege or use tax of the Town shall be included in the Bid prices and shall not be a factor in determining the net lowest Bid.
- F. The Contract file shall contain the basis upon which the award is made.
- G. All Vendors and Contractors must be in compliance, at the time set for opening the Proposal, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

**Section 3-3-22 Requests for Qualifications**

- A. The Town may procure Professional Services by soliciting statements of qualifications for providing such services. The Town may procure such Professional Services by direct selection pursuant to the Procurement Policy, subject to the limitations in ARIZ. REV. STAT., Title 34, as amended. If determined by the Procurement Agent to be inappropriate for direct selection, Professional Services shall be procured through the use of statements of qualifications as follows:
1. The Procurement Agent shall give adequate notice of the need for such services through a Request for Qualifications. The request shall describe the services required, list the types of information and Data required of each Offeror and state the relative importance of particular qualifications.
  2. Persons engaged in providing the designated types of Professional Services may submit statements of qualifications in providing such Professional Services.
  3. The Procurement Agent may appoint a committee to review qualifications. If appointed, the committee shall consist of the Procurement Agent and one or more professionals licensed, registered or admitted to the profession that is the subject of the Procurement. Discussions with Offerors who submit Proposals may be conducted to determine qualifications for further consideration. Award shall be made to the Offeror determined, in writing, to be the best qualified. Compensation shall be negotiated after an award is made.
  4. The Procurement Agent shall conduct negotiations with the Offeror determined to be the most qualified to establish fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified Offeror, then negotiations will be formally terminated with the selected Offeror. If Proposals were submitted by one or more other Offerors determined to be qualified, negotiations may be conducted with such other Offeror or Offerors, in the order of their respective qualification ranking, and the Contract may be awarded to the Offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
  5. The Contract award shall be made to the Offeror determined in writing by the Procurement Agent or authorized designee to be best qualified based upon (a) the evaluation factors set forth in the Request for Qualifications and (b) agreement between the Town and the Offeror as to fair and reasonable compensation.

**Section 3-3-23 Construction Contracts**

All Construction Contracts for public improvement projects shall be awarded in accordance with ARIZ. REV. STAT., Title 34, as amended. Public competitive bidding is not required for Exempt Construction Contracts; the requirements of this Article shall apply. In the event of a conflict

between this Chapter and ARIZ. REV. STAT., Title 34, as amended, the provisions of Title 34 shall govern.

**Section 3-3-24 Withdrawal or Cancellation of Bids or Proposals**

- A. Prior to opening of the Bids or Proposals, the Invitation for Bids or the Request for Proposals may be delayed or canceled, or any or all Bids or Proposals may be rejected, in whole or in part, by the Procurement Agent, when determined to be in the Best Interests of the Town.
- B. After opening of the Bids or Proposals, the Procurement Agent may reject all Bids or Proposals.
- C. A bidder or proposer may withdraw its Bid at any time prior to Bid Opening or the deadline for receipt of the Bid or Proposal by delivering written notice to the Procurement Agent.

**Section 3-3-25 Emergency Procurements.**

Notwithstanding any other provisions of this Article, in the event of an Emergency, the Procurement Agent may make or authorize Emergency Procurements based upon a threat to the public health, welfare, property or safety. Such Emergency Procurements shall be made with such competition as is practicable under the circumstances and in conformance with the Procurement Policy. The written determination for the Emergency and the selection of the Contractor shall be included in the Contract file.

**Section 3-3-26 Non-Competitive Procurement**

A Procurement may be made or Contract awarded by the Procurement Agent without competition only pursuant to the process set forth in the Procurement Policy. Non-competitive Procurement shall be avoided, except when no reasonable alternatives exist. A record of non-competitive Procurements shall be maintained as a public record.

**Section 3-3-27 Cooperative Purchasing**

- A. The Procurement Agent shall have the authority to (1) participate with a state, other political subdivisions of a state and the federal government for the Procurement of Materials or Services with Cooperative Purchasing agreements including through on-line Procurement processes and (2) directly enter into agreements with Vendors who have been awarded Contracts with other governmental entities for Materials and Services, provided the Procurement methods of the other party comply with the intent of this Article.
- B. If a Procurement under this Section involves the expenditure of state or federal assistance or Contract monies, the Procurement Agent shall comply with state or federal law and regulations which are mandatory and which are not reflected in this Article or guidelines adopted by the Town. It shall be the responsibility of the requesting department to

provide the Procurement Agent with the applicable acquisition requirements concurrent with its requisition.

**Section 3-3-28 Protests; Informal and Formal**

- A. Any Interested Party to a Contract may protest (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order or (4) Debarment from the Procurement process of the Town, by filing a written informal protest containing the protestor's name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- B. Protests shall be filed with the Procurement Agent within five Days from the time the alleged instance occurred. The Procurement Agent will make the initial contact in an attempt to resolve the matter.
- C. The Procurement Agent shall render a decision in writing within 15 Days from the date the informal protest is filed. Copies of the decision shall be furnished to all interested parties by first class mail at the last address on file with the Town. If the Procurement Agent fails to render a decision within the required period, the informal protest shall be deemed denied and a formal protest may be filed.
- D. After conclusion of the informal protest process, any Interested Party to a Contract may file a formal appeal protesting (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order, (4) Debarment from the Procurement process of the Town or (5) denial of an informal protest, by filing a formal protest in the manner provided by this Section.
- E. A formal protest shall be in writing signed by an authorized party, containing the protestor's name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- F. The formal protest shall be filed within five business days following (1) the decision of the Procurement Agent on an informal protest or (2) the end of the 15-Day informal protest process, if no decision was issued.
- G. The formal protest shall be heard by a hearing officer appointed by the Procurement Agent for such purposes within 10 business days after filing of the formal protest, unless extended by the hearing officer.
- H. The hearing officer (i) may (a) reject the protest in whole or in part or (b) sustain the protest in whole or in part and (ii) shall provide for an appropriate remedy. In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the Procurement or proposed Procurement including, but not limited to the seriousness of the Procurement deficiency, the degree of prejudice to other Interested Parties or to the

integrity of the Procurement system, the good faith of the parties, the extent of performance, costs to the Town, the urgency of the Procurement and the impact of the relief upon the Town.

**Section 3-3-29 Debarments and Suspensions**

The Procurement Agent has the sole authority to debar or suspend a Vendor from participating in a Town Procurement. The Vendor may be suspended or debarred based upon the following factors:

- A. The Vendor does not have sufficient financial ability, equipment or personnel to perform the Contract.
- B. The Vendor has repeatedly breached contractual obligations to public or private agencies.
- C. The Vendor fails to comply with the requests of a background investigation.

**Section 3-3-30 Acceptance of Work Completed**

- A. Notice of Acceptance. When a contracting party providing Materials or Services to the Town makes a request for acceptance by the Town of work as completed, the Procurement Agent or authorized designee shall indicate acceptance on behalf of the Town on a certificate of final completion or other form designated for that purpose. Until the notice of acceptance is issued, no public work completed on behalf of the Town shall be considered as the property of the Town, and the Town shall assume no responsibility therefore.
- B. Release of Retainage; Conditions. The Town shall not release any funds due but which are held as retainage until the Contract administrator is satisfied that the work has been completed in accordance with the Specifications of the Contract.

**Section 3-3-31 Attestation of Contracts by Town Clerk**

All Contracts entered into by the Town shall be attested to by the Town Clerk and shall not be binding on the Town until so attested. The Town Clerk shall retain the original of all Contracts and agreements according to the retention schedule adopted by the Council and shall provide to the Procurement Agent such documents as are necessary for orderly administration of the Town's business.

**RESOLUTION 2016-36**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE TOWN OF FOUNTAIN HILLS PROCUREMENT POLICY DATED DECEMBER 1, 2016.

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Town of Fountain Hills Procurement Policy dated December 1, 2016 (the "Procurement Policy"), is hereby adopted in substantially the form and substance attached hereto as Exhibit A.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of the Procurement Policy adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, Arizona, December 1, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

\_\_\_\_\_  
Linda M. Kavanagh, Mayor

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Grady E. Miller, Town Manager

\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION 2016-36

[Procurement Policy]

See following pages.

# **Town of Fountain Hills**

## **Procurement Policy**

**December 1, 2016**

# Town of Fountain Hills Procurement Policy

## Table of Contents

Section 1.	Town of Fountain Hills Policy .....	1
Section 2.	Employee Responsibility .....	1
Section 3.	General Procurement Provisions.....	1
Section 4.	Items Not Subject to Competitive Selection Requirements.....	3
Section 5.	Informal Procurement Methods (Under \$50,000) .....	3
Section 6.	Formal Procurement Processes (\$50,000 or Greater).....	10
Section 7.	Professional and Construction Services.....	13
Section 8.	Construction Projects .....	13
Section 9.	Pre-Qualification Lists/Register.....	13
Section 10.	Cooperative Procurement.....	14
Section 11.	Noncompetitive Procurement .....	15
Section 12.	Amendments to Solicitations -Addenda .....	17
Section 13.	Receipt and Opening of Bids, Proposals, and Statements of Qualifications .....	18
Section 14	Contract Management and Vendor Payment .....	18

## Town of Fountain Hills Procurement Policy

1. **Town of Fountain Hills Policy.** It is the policy of the Town of Fountain Hills (the “Town”) to promote and facilitate economical and timely acquisitions from sources of supplies, equipment and services necessary for Town Departments to accomplish their assigned responsibilities, while ensuring a fair and open process that maximizes competition. It is the policy of the Town that the acquisition process is carried out in compliance with the Town Procurement Code, which is set forth in Article 3-3 of the Fountain Hills Town Code (the “Procurement Code”) and ordinances and the administrative policies and procedures set forth herein (the “Procurement Policy”). The Town Manager or authorized designee (the “Procurement Agent”) is charged with the responsibility of implementing the Procurement Code and this Procurement Policy. Capitalized terms used in this Procurement Policy and not otherwise defined shall have the meaning set forth in the Procurement Code.
2. **Employee Responsibility.** Each Town Employee involved in the procurement process is responsible for reviewing, understanding and complying with the Procurement Code, applicable ordinances and this Procurement Policy. If there are any questions or concerns relative to either the applicable policies or procedures, or the ability of the Employee to respond effectively to the requirements of the procedures, then it is the responsibility of the Employee to bring such matters to the attention of the Town Manager immediately. Any purchase utilizing Town funds, regardless of dollar amount, must be for a valid public purpose.
3. **General Procurement Provisions.**
  - 3.1 **Procurement Agent Responsible.** The Procurement Agent shall be informed and involved in all Formal Solicitation discussions and decisions.
  - 3.2 **Applicability of Procurement Regulations.** All Town purchases and contracts for goods and services shall be subject to the rules and regulations of the Procurement Code and this Procurement Policy.
  - 3.3 **Competition.** All reasonable attempts shall be made to obtain competitive bids or proposals by appropriate solicitation method, as prescribed in this Procurement Policy.
  - 3.4 **Budget.** Purchases shall not be contracted for or made unless sufficient funds have been budgeted in the year in which the term of the contract commences. Funds must be re-appropriated for each subsequent year or part of a year within the term of the contract.
  - 3.5 **IT Purchase.** Purchase of any technology or communications goods or services must undergo review and approval of the Network and Information Technology Administrator.

## Town of Fountain Hills Procurement Policy

- 3.6 Fragmentation Prohibited. There shall be no fragmentation or division of contracts or purchase orders in order to circumvent the provisions of the Procurement Code or this Procurement Policy.
- 3.7 Special Conditions. The Procurement Agent must be notified of any specific procurement requirements of any grant, gift bequest or cooperative agreement by the procuring Department.
- 3.8 Publicity. All reasonable attempts shall be made to promote wide-spread awareness of anticipated purchases or contract opportunities to applicable vendors, contractors and suppliers.
- 3.9 Multi-department Contracts. When it is advantageous to the Town, Town-wide contracts should be initiated for use by one or multiple Town Departments for those services or supplies routinely purchased.
- 3.10 Town Attorney Preparation. All contracts are to be drawn under the supervision of the Town Attorney.
- 3.11 Town Attorney Review. Contracts for services and labor require review by the Town Attorney, regardless of dollar amount. Procurement of commodities by Open Market Purchase may be made without additional Town Attorney review so long as the vendor executes a purchase order containing the standard terms and conditions prepared by the Town Attorney.
- 3.12 On-going Contracts. The Town shall fully justify and directly negotiate a reasonable price for the services for instances in which either (A) maintenance, support or membership is required and there is no possibility of price competition; or (B) continuity of services is deemed in the best interest of the Town and continuity cannot be ensured with a competitive process.
- 3.13 Revenue Contracts. Generally, a competitive process shall be used to solicit offers from interested parties for no-cost or revenue-producing arrangements.
- 3.14 Department Monitoring. Contracts shall be monitored by the requesting Department for compliance, which Department shall be responsible for expiration and renewal requirements. Departments shall ensure that fully executed copies of their respective contracts, including all amendments, bonds and certificates of insurance, are on file with the Town Clerk.
- 3.15 Trials; Demonstrations. Vendor demonstrations, free trials or testing of products or services shall require a vendor's signed Statement of Vendor Understanding (Form FHPP3.15) with approval from the requesting Department director. Demonstration or trials of products with an estimated purchase price exceeding \$5,000 must be approved by the Town Manager. The Town shall not be obligated

## Town of Fountain Hills Procurement Policy

to purchase any equipment, product or services provided through demonstrations or testing periods.

- 3.16 Requisition; Purchase Order. Orders for goods and/or services shall not be placed without a requisition and purchase order in place, unless the purchase: (A) has been made utilizing an approved alternative procurement method such as purchasing card, emergency purchase or petty cash reimbursement; and (B) follows the applicable portions of the Procurement Code and this Procurement Policy for such purchases.
- 3.17 Point of Contact. The Employee listed on the cover page of a solicitation shall be the single point of contact for inquiries regarding such Town solicitation.
- 3.18 Confidentiality of Evaluation. Completion of a confidentiality statement is required of all solicitation evaluation team members.

### 4. Items Not Subject to Competitive Selection Requirements.

- 4.1 Utilities. Utilities, communications and other public services that are not subject to competition are exempt from this Procurement Policy; provided, however, that any agreements for such services shall be reviewed and approved by the Town Attorney.
- 4.2 Ancillary Goods and Services. Goods or services that are not specifically provided for in an agreement entered into pursuant to this Procurement Policy may be provided according to such agreement only if: (A) the Town Manager or authorized designee determines, in writing, that such unspecified goods or services are clearly necessary and incidental or ancillary to the goods or services provided for in the agreement; and (B) the agreement is amended to clearly include the incidental or ancillary services within the scope of work.

### 5. Informal Procurement Methods (Under \$50,000).

- 5.1 Petty Cash Purchases (\$1.00 – \$50). Petty cash may be used for expendable items only. Such expenditures shall not exceed \$50 and must be pre-approved by the procuring Department director. A request for petty cash reimbursement shall be accompanied by a valid receipt and certification of public purpose for the item purchased.
- 5.2 Open Market Purchases (Less than \$10,000). Open market purchases do not require competitive quotations or bids; however, competitive quotations and bids should be obtained when practical. Usually, these purchases are routine in nature and obtaining quotations generally consumes more time than is worthwhile expending and shall, to the extent applicable, adhere to the Town's Municipal Sponsorship and Naming Rights Policy.

## Town of Fountain Hills Procurement Policy

- A. This procurement method does not apply to the procurement of Professional Services, Construction or Exempt Construction.
- B. Except as set forth in this Section 5.2, Open Market Purchases must be made in conformance with the Town's Procurement Code and this Procurement Policy.

### 5.3 Small Purchases (\$10,000 – \$49,999).

- A. Subject to the provisions of Section 7 below, the procuring Department shall obtain at least three written competitive quotations for small purchases. A lesser number of quotations may be acceptable, provided there are insufficient numbers of competitive vendors, as approved by the Department director and the Procurement Agent. The shortage of potential bidders available shall be supported by written notification and/or specifications provided to each vendor and written "No Bid" response. The Procurement Agent or designee may require Departments to obtain formal competitive bids or proposals for some small purchases.
- B. While the internet may be a valuable tool for investigating sources for goods and services, quotes taken directly from a search of the internet Web sites are not considered "written" quotes and will not be accepted for this type of purchase.
- C. Departments shall comply with the public notice and legal advertising requirements. The posting must include detailed specifications of product or services solicited.
- D. The method in this Section 5.3 does not apply to the procurement of Construction or Exempt Construction, which shall be procured according to Section 8 below.

### 5.4 No-Cost Procurement.

- A. Revenue producing or "no-cost" contracts that involve the provision of commodities or services provided to the Town in support of Town operations, functions, or programs through which the provider will benefit monetarily, are considered business opportunities shall, to the extent applicable, adhere to the Town's Municipal Sponsorship and Naming Rights Policy.
- B. Revenue producing or no-cost contracts must be awarded using a competitive process that is appropriate to the value, complexity and profile of the business opportunity.

## Town of Fountain Hills Procurement Policy

- C. The Town has the authority to assist the contractor in designing, implementing and maintaining the standards of the provider's program.

### 5.5 Purchase Orders.

- A. The Procurement Agent shall provide forms of purchase order which shall be used for the purchase of all Materials and Services for or on behalf of the Town.
- B. Open purchase orders may be provided by the Procurement Agent for the routine purchase of regularly supplied items. An open purchase order shall be limited to a single source and shall not be valid for more than \$10,000 in the aggregate. All open Purchase Orders shall expire at the end of the fiscal year of issuance and the expiration date shall be plainly stated on the face thereof.

### 5.6 Purchasing Cards.

- A. Town Departments are authorized to use the purchase card ("P-Card") for certain purchases. The individual purchase transaction limit and monthly spending limit are set based on the types of purchases an individual may need to make. P-Card spending limits apply to the total transaction, including taxes, delivery and installation. A Department wishing to increase the P-Card spending limit for purchases should submit a request to the Finance Director including a justification for the request, the purpose for which the card will be used, the spending limit requested and a description of internal controls in effect to prevent misuse.
- B. All P-Card transactions shall be in accordance with applicable law, the Town Procurement Code, this Policy and any other applicable accounting and budgeting rules, policies and procedures established by the Finance Division.
- C. The use of a P-Card by anyone other than the authorized cardholder is prohibited.
- D. The P-Card may only be used to acquire or pay for goods related to a valid public purpose. The P-Card is to be used solely for authorized Town expenditures incurred while conducting Town business during authorized duty hours. **Use of the P-Card for personal expenditures is prohibited.** Using the P-Card for any of the following is strictly prohibited:
  - 1. To withdraw cash from ATMs or other sources.
  - 2. To purchase traveler's checks or any other negotiable instrument.

## Town of Fountain Hills Procurement Policy

3. To purchase alcoholic beverages or any illegal substance.
  4. To purchase professional services of the type that requires a Form 1099 to be issued. In general, the types of services that require the issuance of a Form 1099 include payment of rent, miscellaneous income to independent contractors, medical and health care payments, or fees paid to accountants, attorneys, programmers, temporary help, etc. For additional guidance with respect to Form 1099 requirements and reporting, contact the Finance Division.
  5. To make purchases exceeding the applicable spending limits.
- E. Dividing purchase transactions to circumvent purchase limits is prohibited.
- F. The P-Card may be used for travel-related expenses when such expenses are directly related to a conference attended by the P-Card holder. Hotel rooms may also be booked on the P-Card for meetings, conferences and other Town-authorized events.
- G. Unless otherwise prohibited, the P-Card may be used to conduct procurements by way of telephone or the Internet.
- H. Department responsibilities.
1. The Department director is responsible for all P-Card activity in her/his Department. The Department director shall:
    - a. Review and approve the issuance of any P-Card to an employee. Submit approved requests to the Finance Director for issuance of the P-Card. P-Card request forms may be obtained from the Finance Director.
    - b. Ensure that any employee to whom a P-Card is issued has been sufficiently trained to be familiar with the Town's P-Card and Purchasing policies and procedures.
    - c. Distribute P-Card applications to candidates for P-Cards along with a copy of this Policy and the P-Card Agreement; receive and distribute new and replacement P-Cards.
    - d. Monitor compliance with Town P-Card policies and procedures. It is the responsibility of the Department director to pursue full restitution, including penalties and interest from the cardholder, in the event of a cardholder's misuse of a P-Card. In the event of misuse, the Department

## Town of Fountain Hills Procurement Policy

director will report the incident to Human Resources for other disciplinary actions, up to and including dismissal.

- e. Review cardholder records at least quarterly to verify compliance with rules and policies and to confirm the appropriate use of P-Cards
  - f. Log on to Smart Data Online to review and approve charges made by the cardholders. This must be done within three (3) days of receipt of billing statements.
  - g. If an employee to whom a P-Card has been issued leaves the Town for any reason:
    - i. Recover the P-Card prior to employee leaving town property.
    - ii. Notify the Finance Director to cancel that P-Card.
    - iii. Request that the Administrative Services Director place a hold on wages (up to the maximum limit of the P-Card issued to the employee) if the employee leaves the Town employment and fails to surrender the P-Card.
    - iv. Document all appropriate files and forward the documentation to the Administrative Services Director to review for possible legal action.
    - v. If not previously resolved by the cardholder, resolve any disputed transactions and document the resolution thereof.
2. The Department director may appoint a Departmental P-Card Administrator who will have the responsibility for reconciling, on a monthly or more frequent basis, all charges against statements of activity.
  3. Late fees, delinquency charges and interest accrued are the responsibility of the Department.
- I. Cardholder Responsibilities.
1. A cardholder shall be an employee of the Town of Fountain Hills.

## Town of Fountain Hills Procurement Policy

2. Before receiving a P-Card, employees must sign an affidavit of acknowledgement and understanding of these policies and procedures for use of the P-Card. This document authorizes withholding of money from wages if the card is misused or not returned upon separation from Town employment.
3. A cardholder shall:
  - a. Maintain all receipts that document charges, credits or adjustments incurred on the P-Card. If original receipts are lost, the cardholder will contact the vendors to obtain duplicate receipts.
  - b. Log on to Smart Data Online to review purchases and account coding for accuracy.
  - c. Unless the employee's Department delegates this task to another employee, reconcile the monthly statement of activity against the purchasing activity conducted on the P-Card during that time frame (i.e., match receipts to statement of activity). Cardholders shall resolve any discrepancies on the monthly statement of activity, including charges for items returned to vendors, credit vouchers not appearing on the statement of activity, and disputes with either the vendor or the Town P-Card contractor. Any unresolved discrepancies shall be communicated to the Finance Division for resolution.
  - d. Forward the reconciled statement of activity and the original receipts to the Department director for final approval and submission to the Finance Division for payment.
  - e. Adhere to the limitations imposed upon the use of the P-Card.
  - f. Immediately surrender the P-Card upon resignation, retirement or termination from Town service. If the P-Card is not surrendered upon such separation, the employee consents, in writing by signing the P-Card agreement, to the withholding of the amount of the P-Card limit from any wages or other amounts due the employee pending the reconciliation by the Town of the final monthly statement of activity for the P-Card. Use of a P-Card issued by the Town after separation from Town service is prohibited.

## Town of Fountain Hills Procurement Policy

4. Except as otherwise herein provided, P-Cards are assigned to individual employees. It is the cardholder's responsibility to ensure the security of the P-Card and to ensure the use of the P-Card complies with this Policy.
5. If a P-Card is lost, misplaced, stolen or destroyed, this fact must be reported immediately to the Finance Director. In the case of a card that has been destroyed or otherwise rendered inoperative, the card to be replaced is to be returned to the Finance Director. Employees will be assessed a \$5.00 fee for replacement of lost, stolen or misplaced P-Cards.
6. The cardholder may be personally liable for P-Card charges and may be required to reimburse the Town for P-Card transactions that are contrary to any applicable laws, rules, policies or procedures.
7. Improper use of the P-Card is subject to the appropriate disciplinary actions (up to and including dismissal and prosecution).

### J. Compliance Reviews.

1. Periodically, the Finance Division may perform compliance audits of all Departments. All P-Card-related information, including but not limited to the following, will be reviewed:
  - a. Department policy and procedure documents.
  - b. Documents supporting any appointments or delegation of duties.
  - c. Cardholder agreements and related employee information.
  - d. Reconciled, detailed statements of activity.
  - e. Transactional information.
  - f. Adherence to limits.
  - g. All supporting documents and receipts.
2. A report of the findings resulting from a compliance audit will be issued to the Department director and the Town Manager.

## Town of Fountain Hills Procurement Policy

### 6. **Formal Procurement Processes (\$50,000 or Greater).**

#### 6.1 General Provisions.

- A. Except as permitted in Section 7 below, there must be a formal solicitation process for expenditures or when the total contract value for a singular item, service or commodity will exceed \$50,000 either as a one-time purchase or the aggregate cost or value over the contract term.
- B. The Procurement Agent shall ensure that Vendors are informed that they are responsible for reading all solicitation documents in their entirety, and that offering a bid or proposal in response to a solicitation is an offer to contract under the terms and conditions of the solicitation.
- C. The Procurement Agent and the applicable Department director are jointly responsible for ensuring compliance with all solicitation requirements.
- D. The Town will not reimburse any cost incurred by a vendor in preparing a bid, proposal or statement of qualifications.

#### 6.2 Sealed Bidding – Invitation for Bids.

- A. The sealed bid method is preferred when it maximizes price competition by basing the selection among responsive, responsible bidders on price alone.
- B. The procuring Department shall contact the Procurement Agent to establish an Invitation for Bids (IFB). The Procurement Agent shall provide a solicitation number.
- C. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.
- D. The procuring Department shall provide the Procurement Agent with all information necessary to produce a complete IFB package, in a form suitable for public release.
- E. After public opening, bids shall be checked and analyzed for compliance with bid requirements and law by the Procurement Agent.
- F. The procuring Department shall be responsible for: (1) tabulating and verifying all bids to determine compliance with the specifications; and (2) preparing the necessary materials for Town Council action.

## Town of Fountain Hills Procurement Policy

- G. Omissions on any item on the bid price sheet shall be deemed a “No Bid.”
- H. All bid tabulations will be posted by the Procurement Agent on the Town’s website after final verification of pricing and compliance with bid specifications.
- I. A full record of submissions, bid tabulations, disqualifications and notices of intent to award shall be kept on file according to the Town’s adopted records management policy.

6.3 Request for Proposals. The Request for Proposals method is primarily intended to permit competition on quality and other factors, as well as on price. Requests for proposals shall not be solicited from Technical Registrants, which shall only be procured through the Request for Qualifications process in Section 6.4.

- A. The procuring Department shall contact the Procurement Agent to establish a Request for Proposals (RFP). The Procurement Agent shall provide a solicitation number.
- B. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.
- C. The procuring Department shall provide the Procurement Agent with all information necessary to prepare a complete RFP, in a form suitable for public release.
- D. After public opening, Proposals shall be checked and analyzed for compliance with solicitation requirements and law by the Procurement Agent, and distributed to the members of the Selection Committee with a comparison matrix and evaluation instructions.
- E. Firms under consideration will be evaluated by the Selection Committee composed of the Procurement Agent, the Department director procuring the services (or his/her designee), and any other staff that the Department director and Procurement Agent feel possess sufficient knowledge or relevant experience that would materially contribute to the evaluation. The Selection Committee may include outside professionals who can provide expertise not available from Town staff and shall include such professionals who are required by State law. Such outside professionals cannot represent a firm under consideration.
- F. Evaluations shall be tabulated by the Procurement Agent. Discussions and/or negotiations may be opened at this time with the firm selected to be

## Town of Fountain Hills Procurement Policy

the most qualified by the Selection Committee according to the scope of work.

- G. Original Proposal(s) of successful vendors shall be forwarded to the procuring Department for preparation of the item for Town Council action.
- H. The full record of submissions, summary of evaluations, disqualifications and notices of intent to award shall be kept on file according to the Town's adopted records management policy.

6.4 Request for Qualifications. The Request for Qualifications (RFQ) method is similar to the Request for Proposal method, except that qualifications are the determining factor in selection; price is not allowed to be considered. The RFQ is a request by the Town for detailed information concerning the qualifications of firms to provide professional services to the Town.

- A. The RFQ process is the preferred method for the selection of professional, Services, unless such services are direct-selected as permitted in Section 7 below.
- B. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.
- C. The procuring Department shall provide the Procurement Agent with all information necessary to prepare a complete RFQ, in a form suitable for public release.
- D. The Procurement Agent shall assist the Department in completing a Request for Qualifications.
- E. The procuring Department may request that RFQ specifications be prepared by contracted consulting firms. Contractors who are working on specifications to be used for competitive procurements shall be precluded from submitting qualifications on the resulting procurement.
- F. After public opening, statements of qualifications shall be checked and analyzed for compliance with solicitation requirements and law by the Procurement Agent, and distributed to the members of the Selection Committee with a comparison matrix and evaluation instructions.
- G. Firms under consideration will be evaluated by a Selection Committee composed of the Procurement Agent, the Department director procuring the services (or his/her designee), and any other staff who the Department

## Town of Fountain Hills Procurement Policy

director and the Procurement Agent feel possess sufficient knowledge or relevant experience to materially contribute to the evaluation. The Selection Committee may include outside professionals as necessary or as required by State law. The outside professional cannot represent a firm that has responded to the RFQ.

- H. Evaluations shall be tabulated by the Procurement Agent. Discussions and/or negotiations shall be opened at this time with the firm selected to be the most qualified by the Selection Committee.
- I. If negotiations with the first firm do not result in an agreement, negotiations shall be conducted with the next ranked firm, and so forth.

7. **Exceptions for Professional Services.** Professional services should, unless direct selection is deemed to be in the Town's best interest, be awarded using the competitive process pursuant to Section 6 above that is appropriate to the value, complexity and profile of the business opportunity.

7.1 Amount of \$125,000 or Less. Professional Services in an amount of \$125,000 or less may be procured by direct selection of qualified vendor. However, competitive proposals, quotations and/or bids should be obtained when practical and permitted by law.

7.2 Amount Greater than \$125,000. Professional Services in an amount greater than \$125,000 shall be procured only through a Request for Proposals (RFP) or a Request for Qualifications (RFQ), as applicable.

8. **Construction Services.** Construction is governed by ARIZ. REV. STAT. Title 34. The procuring Department is responsible for the development of the solicitation in accordance with requirements of Title 34 and the Procurement Code for all Construction services. Exempt Construction services may be direct-selected according to the process set forth in Section 7 above.

9. **Pre-Qualification Lists/Register.** A list of qualified professionals may be established for use in selection of service providers by following all the same actions applied in the RFQ process set forth above. Qualified lists are normally used to streamline future contracting processes for consultant services, thus eliminating the need for multiple RFQs for the same discipline. Qualified lists are usually for the benefit of the procuring Department(s), but unless expressly precluded by the RFQ, Council action or State law, the lists may be used by any Department. Departments are required to solicit proposals from multiple firms on a qualified list prior to making a contract recommendation. Pre-qualification of Technical Registrants must comply with the requirements of ARIZ. REV. STAT. § 34-101 *et seq.*

## Town of Fountain Hills Procurement Policy

### 9.1 Dollar Thresholds for Pre-Qualified List.

- A. Anticipated Contract Amount Less than \$125,000: The Contractor may be directly selected from the list. The selected Contractor must submit updated resumes and current project lists before contract is executed.
- B. Anticipated Contract Amount Between \$125,000 - \$250,000: A Selection Committee shall be formed, including, at a minimum, the Department project manager and other individuals with the technical expertise to evaluate proposals. Staff shall request and evaluate updated resumes, project lists and proposals based on the scope of services for the project before entering into negotiation for the final selection. A minimum of three proposals should be requested, and each proposal ranked. The selection process may include interviews and discussion from the highest ranked firm. The Selection Committee shall select the highest qualified firm based on written and/or oral evaluations. If negotiations with the first firm do not result in an agreement, negotiations shall be conducted with the next ranked firm, and so forth.
- C. Anticipated Contract Amount Exceeds \$250,000: The Prequalified Consultants List may not be used, and the normal procurement process must be followed according to the Procurement Code and this Procurement Policy.

9.2 Equity Standards. Departments utilizing the Prequalified List shall ensure equitable treatment of all Contractors prequalified for Town projects.

### 10. Cooperative Procurement.

- 10.1 Described. Cooperative Purchasing is a method of inter-governmental purchasing in which a public purchaser has competitively selected and awarded a contract and allows other public purchasing agencies to purchase from the selected vendor under the same terms and conditions as the original contracting agency.
- 10.2 Equally Stringent. The Town is authorized to take advantage of purchasing contracts initiated, sponsored, conducted or administered by another public procurement unit, provided: (A) the program has been authorized by the governing body of the procurement unit; and (B) the procurement has been conducted by a competitive process at least as stringent as the Town's policy.
- 10.3 Form of Agreement. In order to utilize a cooperative contract, a Town Cooperative Purchase Agreement or Professional Services Agreement must first be in place. The procuring Department is responsible for verifying the existence of a valid underlying contract to which the Town's Cooperative Purchase Agreement or Professional Services Agreement may attach. If a cooperative agreement is already in place between the Town and the vendor in accordance with this Procurement Policy, the

## Town of Fountain Hills Procurement Policy

procuring Department may request an extension of the cooperative agreement so long as the underlying agreement is extended for at least the same term.

- 10.4 **Legal Requests.** Requests to the Town Attorney for use of a cooperative agreement must include all information necessary for the Town Attorney to draft the cooperative purchasing agreement including, but not limited to, the underlying contract, a scope of work and verification that the vendor is authorized to do business in Arizona.
11. **Noncompetitive Procurement.** In general, noncompetitive procurement methods should be avoided. In rare cases a needed purchase may fall into one or more noncompetitive categories. In these instances, a contract may be awarded or purchase made, provided the method appropriate to the procurement is properly documented.
- 11.1 **Sole Source Procurement.** Sole Source procurement shall be used only under circumstances where there is clear and convincing evidence that there is only one source available for the needed commodity or service. Any request by a Department that procurement be restricted to one potential Contractor shall be accompanied by an explanation as to why no other would be suitable or acceptable to meet the need. The Department requesting sole source procurement shall provide written evidence to support a sole source determination.
- A. In all instances the requesting Department must demonstrate that there was a serious, diligent effort to identify potential sources, test alternatives available, and provide adequate notice to potential vendors of the Town's need for a commodity or service.
  - B. Upon the Department's determination that a sole source is necessary and appropriate, the Sole Source Justification (Form FHPP11.1.B) must be completed for each sole source request. Requests received that do not include the completed Sole Source Justification form will be returned to the requesting Department. The justification information must be (1) submitted with all requests and (2) provided in sufficient detail to allow an informed decision on the request.
  - C. All sole source requests must be sent to the Procurement Agent, who will review the sole source request and decide whether or not the sole source is adequately justified.
  - D. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.

## Town of Fountain Hills Procurement Policy

- E. Sole source requests that have been denied will be returned to the originating Department with instructions to prepare specifications for issuance of a competitive solicitation or to provide additional justification.

### 11.2 Competition Impractical Determination. Competition Impractical Determination (CID) shall be used only under circumstances where there is clear and convincing evidence that competitive solicitation is not in the best interests of the Town.

- A. In all instances the requesting Department must demonstrate that there was a serious, diligent effort to identify potential sources, test alternatives available, and provide adequate notice to potential vendors of the Town's need for a commodity or service or that costs exceed the benefit of open competition.
- B. Upon the Department's conclusion that a CID is necessary and appropriate, the CID Form (Form FHPP 11.2.B) must be completed. Requests received that do not include the completed CID Form will be returned to the requesting Department. The justification information submitted must provide in sufficient detail to allow an informed decision on the request to be made.
- C. All CID Forms must be sent to the Procurement Agent, who will review the CID and decide whether or not it is adequately justified.
- D. A CID that has been denied will be returned to the originating Department with instructions to prepare specifications for issuance of a competitive solicitation or to provide additional justification.

### 11.3 Emergency Procurement. Emergency Procurement, as authorized pursuant to Section 3-3-25 of the Town Code, shall be utilized only under circumstances when the delay in receiving needed products or services would seriously threaten: (i) the functioning of government; (ii) the preservation or protection of property; or (iii) the health or safety of any person. Although typical bidding procedures can be avoided, competition should be utilized to the extent practical and a contract, in a form approved by the Town Attorney, shall be executed.

- A. An Emergency Procurement exceeding \$50,000 shall be supported by a declaration of an emergency by the Mayor or the Town Council, which may be, if necessary, in the form of ratification of a prior action of the Town Manager.
- B. Emergency Procurements under \$50,000 may be approved by the Town Manager.

## Town of Fountain Hills Procurement Policy

- C. A written determination of the basis for the emergency procurement shall be forwarded to the Procurement Agent for inclusion with the procurement and/or payment file.
  - D. The Town Department seeking an Emergency Procurement shall prepare a written requisition, which may occur after the emergency procurement, if necessary, documenting the existence of an Emergency condition and explaining the Procurement need. The requisition shall be signed by the Department director.
  - E. An Emergency Procurement shall be limited to those Materials, Services or Construction reasonably necessary to satisfy the Emergency need.
12. **Amendments to Solicitations – Addenda.** Prior to award of a Contract, Addenda may be issued due to changes in quantity, specifications, scope of work, delivery schedules, opening dates or plans/drawings. Addenda may also be required for correcting an ambiguous provisions or resolving conflicting provisions.
- 12.1 **Changes following Pre-bid.** A change or correction required as a result of a discussion during a pre-bid/pre-proposal conference requires an addendum to the Solicitation. A change to the written terms of the Solicitation must be done formally in writing through an addendum to the solicitation document.
  - 12.2 **Process for Changes.** The procuring Department shall notify the Procurement Agent of the solicitation to be amended, identifying specific areas of the document that will be changed, deleted, or added.
  - 12.3 **Extensions of Time.** An important matter to consider when issuing an addendum is whether or not to extend the time and date for receipt of offers. The impact of the changes must be carefully considered in light of the time it will take a prudent offeror to incorporate those changes. This includes the time impact on the work already done in preparing the bid or proposal.
  - 12.4 **Town Attorney Preparation.** The Procurement Agent will authorize the procuring Department to submit the request for an Addendum to the Town Attorney's Office for drafting.

13. **Receipt and Opening of Bids, Proposals, and Statements of Qualifications.**

13.1 **Bid Receipt.** Sealed Bids received, Proposals and Statements of Qualifications shall be time-stamped on the envelope or shipping label (not box), recorded on the solicitation log and kept in a safe place by the Procurement Agent until the appointed day and time when they are publicly opened and read. It is important to note that Sealed Bids shall not be submitted only by facsimile or in an electronic format even though an electronic copy may be required as part of the hard copy submitted.

13.2 **Late Bids.** Late Bids shall not be accepted and shall be returned, unopened, to the bidder.

13.3 **Bid Security.** Certified checks and bid bonds, if required by the Department as bid or performance security, shall be received, examined for accuracy and recorded by the Procurement Agent.

13.4 **Public Opening.** Responses to Solicitations shall be opened publicly at the time, date and location as designated in the Solicitation document. Bid/proposal openings are generally scheduled for Wednesdays at 3:00 p.m. (local time, Phoenix, Arizona), but may be scheduled at such other time as determined by the Procurement Agent.

A. Sealed Bids shall be opened at the appointed date and time by an Employee from the procuring Department. The respondent name, bid price, and other information deemed appropriate by the Procurement Agent shall be read aloud. All other bid information terms and conditions will not be read at this time.

B. Sealed Proposals shall be opened at the appointed date and time by an Employee from the procuring Department. Only the names of the proposers submitting information are to be read. Prices, if included as part of the proposal, shall not be provided or read at that time.

13.5 **File Keeping.** Envelopes and/or shipping labels from boxes shall be kept in the procurement file until after the protest period for that solicitation has passed. For projects using federal funds (i.e. HUD), all competitive Sealed Bids must be date and time stamped upon receipt. These time and date stamped bid envelopes must be retained with the project files as required by federal guidelines to document compliance for audit purposes.

14. **Contract Management and Vendor Payment.** The procuring Department is responsible for ensuring commodities or service deliverables are in compliance with the scope and terms of the contract. The procuring Department director serves as the Town representative in determining the acceptance/rejection of goods and services and the

## Town of Fountain Hills Procurement Policy

conditions of acceptance or rejection and payment of the deliverables. Responsibilities include, but are not limited to the following:

- 14.1 Monitoring. Monitoring contract performance and ensuring compliance with all contract terms and conditions.
- 14.2 Renewals/Extensions. Ensuring timely renewal/extension and managing amendments to the contract through Town Attorney approved amendments signed by the persons duly authorized to enter into contracts on behalf of the Town and Contractor.
- 14.3 Updates. Maintaining current contact information and ensuring that all contract documents are correctly updated and deposited with the Town Clerk's Office.