

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
URBAN ENERGY SOLUTIONS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of March 21, 2017, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Urban Energy Solutions, Inc., an Arizona corporation (the "Contractor").

**RECITALS**

- A. Pursuant to Section 7.1 of the Town Procurement Policy and 3-3-26 of the Town Code, the Town may directly select certain Contractors for professional and technical services.
- B. The Contractor possesses the specific skill and experience required to provide an EMS controller upgrade and programming for a new chiller at the Central Plant (the "Services").
- C. The Town desires to enter into an Agreement with the Contractor to perform the Services, as more particularly set forth in Section 2 below.

**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 March 19, 2018, unless terminated as otherwise provided in this Agreement.
2. **Scope of Work.** Contractor shall provide the Services as set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by reference.
3. **Compensation.** The Town shall pay Contractor an amount not to exceed \$31,392.00 for the Services at the rates set forth in the Fee Proposal, attached hereto as part of **Exhibit A**.
4. **Payments.** The Town shall pay the Contractor monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. The contract number must be referenced on all invoices.

5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town.

6. Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel possessing substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

8. Licenses; Materials. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Contractor.

9. Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

10. Indemnification. To the fullest extent permitted by law, 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. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Contractor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve 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 Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery

(subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability -- Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

#### 11.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO

coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Contractor engages in any professional services or work in any way related to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the Town.

12. Termination; Cancellation.

12.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by Contractor of written notice by the Town. Upon termination for convenience, Contractor shall be paid for all undisputed services performed to the termination date.

12.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of

such termination for cause, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

12.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

12.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a Contractor to any other party of this Agreement with respect to the subject matter of this Agreement.

12.5 Gratuities. The Town may, by written notice to the Contractor, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

12.6 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.

13. Miscellaneous.

13.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this Agreement.

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

13.3 Laws and Regulations. Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

13.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Contractor.

13.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will 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, this Agreement will promptly be physically amended to make such insertion or correction.

13.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

13.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements

have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. 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 Agreement.

13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Contractor shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

13.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Contractor.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

13.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

13.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for

delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

13.14 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 (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) 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:       Urban Energy Solutions, Inc.  
3312 East Broadway Road  
Phoenix, Arizona 85040  
Attn: Curt Baker

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 (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) 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.

13.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

13.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 13.17 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 (A) 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 (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, 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 subsection. 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 subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

13.17 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 subcontractor's 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.

13.18 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.

13.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work or the Fee Proposal, the documents shall govern in the order listed herein.

13.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

[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

*OK 3/27/17*  
  
\_\_\_\_\_  
Grady E. Miller, Town Manager

ATTEST:

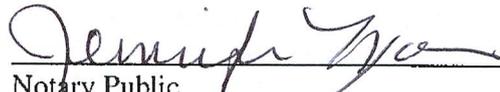
  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On March 28, 2017, 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)

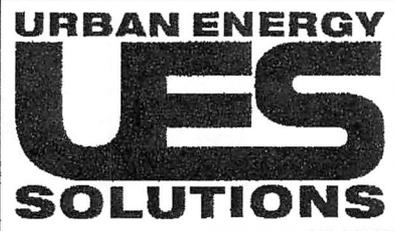
[SIGNATURES CONTINUE ON FOLLOWING PAGE]



EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
URBAN ENERGY SOLUTIONS, INC.

[Scope of Work and Fee Proposal]

See following pages.



PHOENIX  
 3312 E. Broadway Road · Phoenix, AZ · 85040  
 Office: 480.282.9501 Fax: 602.357.7403

[www.UrbanEnergyInc.com](http://www.UrbanEnergyInc.com)

AZROC 252925 K-11 Electrical  
 AZROC 276050 B-1 General Contracting

## Budget Proposal [16-0080]

**Company** Town of Fountain Hills  
**Contact** Raymond Reese  
**Date** March 21, 2017

**Project** Town of Fountain Hills Central Plant Controller Upgrade & Chiller Addition

We are pleased to provide a proposal HVAC DDC controls and connection to the existing Niagara AX, controls system for the above named project. The following documents were used to prepare this quotation.

Base bid total	\$ 31,392.00
Bid Bond	Not Included
Performance Bond	Not Included

*"This project has been identified as a MRRRA project and sales tax has been included in the material cost for purposes of this proposal."*

The estimated MRRRA retail sales tax for materials included in the total Bid is approximately \$ 653.00

**Please confirm all quantities, to make sure they align with mechanical take off of equipment counts.**

Scope coverage	Qty.	Covered	Not Covered
KMC Controls		✓	✓
BACnet router	1	✓	✓
New Chiller control	1	✓	✓
Removal of existing plant controller		✓	✓
Installation of new plant controller		✓	✓
EMT conduit		✓	✓
Control valves	2	✓	✓
Installation of new control devices and sensors for existing equipment		✓	✓

## **Budget Scope of Work:**

### **Head End Supervisory Control:**

- Tie into the existing Tridium Niagara AX Johnson Controls Facility Explorer Web based system controller
- (Qty.1) Provide and install a BACnet router to interface plant controller with the existing site EMS (**Ethernet installation, connection and IP address provided by owners IT. This is required for interface to building EMS**).

***Network Infrastructure Installation between plant and nearest building, provided by Town of Fountain Hills***

### **Central plant controller upgrade and chiller addition control to include the following:**

- Upload existing controller database
- Remove existing N2 plant controller and control wiring while maintaining stability to the system
- Provide and install KMC BACnet DDC plant controller
- (Qty.2) Immersion well temperature sensors. (**Thermo wells are provided loose for installation by the mechanical contractor**) (**added chiller**)
- Current sensing relays for pump status proving (**added chiller & pumps**)
- (Qty.2) Motorized control valve (**provided to the mechanical contractor for installation**)
- Output to enable the chiller (**added chiller**)
- Outputs to control the primary chilled water pump VFD's (**added chiller**)
- Terminate existing control wire on new controller
- Configure program and download new controller
- Test and validate sequence of operations from the existing EMS supervisory controller front end.

### **Installation:**

- All necessary wiring and labor for a completely operational system
- Plenum cable wiring will be used for free aired control wire
- EMT Conduit will be used only in mechanical rooms

### **Engineering:**

- Control equipment datasheet submittals
- Point to point system start up with documentation
- Update system programming and graphics to reflect added equipment

## Clarifications

- Warranty period is 1 year from CO date
- Proposal is valid for 30 days
- Material purchase cost includes sales tax for any alteration, repair, replacement or additions
- Temperature control valves are provided loose for installation by mechanical contractor.
- *Textura and any other payment processing systems are not included, fees will be added to contract*

## Exclusions

- Mechanical equipment and piping accessories are not included unless specifically listed above
- Line voltage power, wiring, motor starters, VFD's and contactors are not included
- All Life safety systems and devices, interfacing, interlocking, installation and sequences of any type are not included
- Duct smoke detectors and associated mounting, power, local a/c system fan shutdown Interlock wiring, and wiring related to remote reset and alarm indication devices are not included
- Fire, smoke, and combination fire/smoke damper/actuator assemblies and associated mounting, power, actuators, smoke detectors, connection to fire alarm, and interlock wiring for shutdown of equipment or operation of damper assemblies are not included
- 24, 120, 208, 277, or 480 VAC power to mechanical units (HP's, VAV's, FC's, Fan's EF's, Make up air units, AHU's etc....) are not included
- Conduit for control wiring is not included unless specifically stated in scope of work
- Sensors installed in block, CMU, tilt slab are not included
- Patching and painting of existing sensor locations are not included
- Troubleshooting, repairing or replacing existing controls and HVAC equipment are not included
- Demo of existing controls are not included
- Ethernet and network wiring and installation are not included
- Communications wiring between buildings are not included (will use the sites Ethernet LAN or communications utilizing BACnet over IP)
- Upgrading existing hardware and software are not included
- Operator workstation, PC and laptop are not included unless specifically stated in scope of work
- Server software, communication drivers and licenses are not included unless specifically stated in scope of work
- Trenching and underground conduit are not included
- Access doors are not included
- Roof penetrations are not included
- Lift rental, scaffolding and installation that requires the use of a ladder above 8' are not included
- Commissioning or any support of a 3<sup>rd</sup> party agency are not included (will provide add for onsite assistance to the commissioning agency)
- Sales Taxes, bonds or other fees are not included
- Davis Bacon wage rate is not included
- Shift differential and expedited scheduling costs are not included
- Overtime labor rates, our proposal is based on normal daytime working hours Monday - Friday between 6:00am-3:00pm

Sincerely,

**Loren Waxman,**

**Urban Energy Solutions, Inc.**

3312 E Broadway Rd - Phoenix, AZ 85040

O: 480-282-9501 D: 602-429-3056 F: 602-357-7403 C: 480-694-7629

E: [lorenwaxman@urbanenergysolutions.com](mailto:lorenwaxman@urbanenergysolutions.com)

W: [www.UrbanEnergyInc.com](http://www.UrbanEnergyInc.com)

**TRUSTED TO DELIVER. POWERED TO PERFORM.**

ELECTRICAL CONTRACTING / HVAC CONTROLS





### CONTRACT/GRANT INFORMATION SHEET - NEW CONTRACT

Date: 3/27/2017	
Staff's Name: Raymond Rees	Department: Public Works
Vendor's Name: Urban Energy Solutions, Inc.	Vendor Number:
Address: 3312 E Broadway Rd., Phoenix, AZ 85040	
Phone: 480-282-9501	
Received W9: <input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> ALREADY IN SYSTEM	
Business License #: 5621	Exp. Date: 3/31/2018

ACCOUNTING SUMMARY	Org	Object	Project/#	\$
Accounting Code:	CIPFAC	8020	F4030	\$31,392
Accounting Code:				
Accounting Code:				
TBD(used for variety of different things/departments/funds):	Choose an item.			

#### CONTRACT SUMMARY

Contract Number Assigned:	<b>C2017-099</b>		
Current Contract Total:	\$31,329	Total Contract Amount with Renewals:	
Brief Description of Service:	Chiller controller upgrade and intigration		
If Renewable:	Choose an item.	Total # of Renewals Max:	Choose an item.
FY Cumulative Vendor Totals:	Does this Contract put it over \$50,000	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Contract Beginning Date:	3/21/2017		
Contract Expiration Date:	3/19/2018		
Budgeted Expenditure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Budget Page #:			
Approved by Council:	<input type="checkbox"/> Yes; Date: <a href="#">Click here to enter a date.</a>	<input type="checkbox"/> No	<input checked="" type="checkbox"/> N/A
Insurance Certificate provided:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Warranty Period:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, expires <a href="#">Click here to enter a date.</a>
Estimated Start Date:	4/3/2017		
Estimated Completion Date:	6/30/2017		

#### GRANT SUMMARY

Paid for by Grant:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name of Grantee:		
Grant Number Assigned:		Resolution Number:
Date Council Approved:		

## REQUEST FOR LEGAL SERVICES

<b>Name/Phone Number/E-mail of Requestor:</b> Raymond Rees/480-816-5180/rrees@fh.az.gov	<b>Date of Request:</b> 3/6/2017 <b>Date Director Approved Request:</b> 3/6/2017 <i>P.M.</i>
<b>Procurement Approval by:</b> Craig Rudolphy Click here to enter a date. Yes <input type="checkbox"/> No: <input type="checkbox"/> - Contact Finance Director	<b>Due Date (From Town Attorney's office):</b> 3/20/2017 <ul style="list-style-type: none"> <li>Deadline for return of request from Legal is 10 business days after Procurement Approval.</li> <li>Deadline for completed packet items submitted to the Town Clerk - 12 PM the Tuesday prior to the date of the Council meeting.</li> </ul>
<b>Council Meeting Date:</b> Click here to enter a date. Item <u>does not</u> require Council approval <input checked="" type="checkbox"/>	
<b>Request for Legal staff:</b> Please provide a CPA with Urban Energy Solutions, Inc for EMS Controller Upgrade and programing for the new chiller.	
<b>Proposed Agenda Language (if applicable):</b> Consent Agenda Item <input type="checkbox"/> Regular Agenda Item <input type="checkbox"/>	
<b>CONSIDERATION of _____</b>	
<b>Vendor/Consultant/Agreement/Agency Information:</b> Contact Name: <u>Curt Baker</u> Entity Name: <u>Urban Energy Solutions, Inc</u> Entity Address: <u>3312 E. Broadway Rd. Phoenix, AZ 85048</u> Entity Phone, Fax and E-mail address: <u>480-282-9501/602-357-7403/CurtBaker@UrbanEnergyinc.com</u> Town of Fountain Hills Business License Number: <u>5621</u> Arizona Corporation Commission File Number: <u>14986366</u>	
<b>Documents Requested:</b> <input type="checkbox"/> Ordinance # _____ (Draft attached Y/ / N) Publication Dates for Zoning Actions: _____ <input type="checkbox"/> Resolution # _____ (Draft attached Y/ / N) <input type="checkbox"/> Easement _____ (Specify Type) <input type="checkbox"/> Deed _____ (Specify Type) <input type="checkbox"/> IGA / Amendment (Corresponding Resolution Required) <input type="checkbox"/> PSA / Amendment	<input type="checkbox"/> PA (Purchase) / Amendment <input type="checkbox"/> IFB (Invitation for Bid) <input type="checkbox"/> RFQ (Request for Qualifications) <input type="checkbox"/> RFP (Request for Proposals) <input type="checkbox"/> CSA (Construction) / Amendment <input type="checkbox"/> QSP _____ <input checked="" type="checkbox"/> Cooperative Purchasing Agreement Approval _____ <input type="checkbox"/> Other _____
<b>Required Contract/Agreement Information:</b> Method of Vendor Selection: <u>Cooperative Purchasing Agreement</u> Term of Contract/Agreement: <u>1 year</u> Contract Amount (this contract): <u>\$31,392</u> Cumulative Contract Amount: _____ Brief description of services/goods being sought: <u>Controller and EMS Upgrade for new Chiller</u> Contract # assigned: <u>C2017-099</u> Funding Source: <u>General</u> Project No. _____ Budget Transfer Required: _____; if yes, attach appropriate documentation	
<b>Staff Check List:</b> A "request for legal services form" will be returned if submitted without the necessary information and attachments. *Scope of Work or Specifications Attached *Fee Proposal or Price Sheet Attached *Proposal or Statement of Qualifications from Vendor Attached *Bid/RFQ/RFP Schedule Attached *QSP Document Attached *Underlying Cooperative Purchasing Agreement Attached	
Finance <b>requires</b> a "contract cover sheet" prior to processing the approved/signed contract/agreement for payment(s).	