

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
JE FULLER/HYDROLOGY AND GEOMORPHOLOGY, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of April 24, 2019, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and JE Fuller/Hydrology and Geomorphology, Inc., a(n) Arizona corporation (the "Consultant").

RECITALS

A. Pursuant to Section 7.1 of the Town's Procurement Policy and Section 3-3-26 of the Town Code, the Town may directly select certain consultants for professional and technical services.

B. The Consultant possesses the specific skill and experience required to perform a concept design study for the Town related to drainage improvements at Golden Eagle Park.

C. The Town desires to enter into an Agreement with the Consultant to perform the Services, 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 Consultant 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 April 24, 2020, unless terminated as otherwise provided in this Agreement.

2. Scope of Work. Consultant shall provide the Services as set forth in the Proposal attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. The Town shall pay the Consultant an aggregate amount not to exceed \$32,438.00 at the rates set forth in the Proposal.

4. Payments. The Town shall pay the Consultant 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. This Agreement 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. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire Town residents to fill vacant positions at all levels. Consultant 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, Consultant 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 Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the Town.

8. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The Town has no obligation to provide Consultant, 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 Consultant.

9. Performance Warranty. Consultant 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 Consultant 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, breach of contract, in connection with the work or services of the Consultant, 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 Consultant, Consultant 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 Consultant. 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 Consultant 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. Consultant'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 Consultant. Consultant 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. Consultant 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, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting the Town and Consultant. Consultant 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, Consultant 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 Consultant'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 Consultant'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 the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, 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) Consultant’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 Consultant 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. Consultant 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. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant'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 Consultant engages in any professional services or work in any way related to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant 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. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant'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 Consultant of written notice by the Town. Upon termination for convenience, Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant, 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 Consultant or any agent or representative of the Consultant 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 Consultant an amount equal to 150% of the gratuity.

12.6 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the Town shall keep the Consultant fully informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Consultant shall be relieved of any subsequent obligation under this Agreement.

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 Consultant 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. Consultant, 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 Consultant, its employees or subcontractors. The Consultant, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements as agreed in Section 2 above and in Exhibit A. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Consultant 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 Maricopa County, Arizona.

13.3 Laws and Regulations. Consultant 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 Consultant 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 Consultant.

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 Consultant without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

13.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Consultant 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 Consultant.

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 Consultant 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 Consultant any amounts Consultant 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 Consultant any amounts Consultant 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: Pierce Coleman PLLC
4711 East Falcon Drive, Suite 111
Mesa, Arizona 85215
Attn: Aaron D. Arnson, Town Attorney

If to Consultant: JE Fuller/Hydrology and Geomorphology, Inc.,
8400 South Kyrene Road, Suite 201
Tempe, Arizona 85284
Attn: Richard Waskowsky

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 Consultant 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 Consultant's duties under this Agreement. Persons requesting such information should be referred to the Town. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

13.16 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.17 below, Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant 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 Consultant'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 Consultant'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, Consultant 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 Consultant pursuant to this Agreement. Consultant 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 Consultant or its subcontractors reasonable advance notice of intended audits. Consultant 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 Consultant 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). Consultant'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.

13.18 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.

13.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Proposal, any Town-approved invoices, and the RFP, 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"

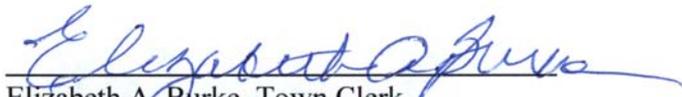
TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

CP
5/1/19



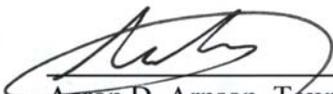
Grady E. Miller, Town Manager

ATTEST:



Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

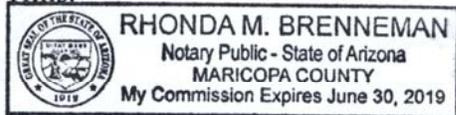


Aaron D. Arnson, Town Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On May 7, 2019, 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]

"Consultant"

JE FULLER/HYDROLOGY AND GEOMORPHOLOGY, INC.,
a(n) Arizona corporation

By: *[Signature]*

Name: Richard Waskowsky

Title: Vice-President

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On April 24, 2019, before me personally appeared *Richard Waskowsky*, the
U.P. of JE FULLER/HYDROLOGY AND GEOMORPHOLOGY, INC., a(n)
Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be
the *vice president* of the corporation.

Annette L. Griffin
Notary Public

(Affix notary seal here)

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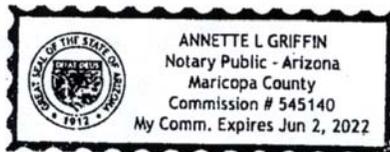


EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
JE FULLER/HYDROLOGY AND GEOMORPHOLOGY, INC.

[Consultant's Proposal]

See following pages.



April 17, 2019

Randy Harrel, PE, SE, RLS, CFM
Town Engineer
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

RE: Golden Eagle Park Drainage Improvement – Conceptual Design

Dear Mr. Harrel:

Thank you for requesting the services of JE Fuller/Hydrology and Geomorphology, Inc. (JE Fuller). We are very interested in the opportunity to continue working with the Town. This document summarizes our understanding and needs of the project as well as outlines the proposed scope of services to be completed.

PROJECT UNDERSTANDING

Golden Eagle Park, originally gifted to the Town of Fountain Hills (Town) by MCO Properties in c.1995, lies mostly within and below the flood detention basin high water level of the Golden Eagle Park Dam. Three washes – Ashbrook Wash, Bristol Wash, and Cloudburst Wash – flow into this dam detention basin. The Town had originally graded channels, approximating (at that time) a 1-year storm capacity – around baseball/softball fields constructed in the detention basin, recognizing that in larger storms that the fields would be inundated due to dam backwater anyway.

In the late 1990's, it was determined that Golden Eagle Park Dam was unsafe, as it was shown to be substantially overtopped (and possibly catastrophically eroded) in the ½-PMF event (approximately a 500-year storm). Therefore, the Flood Control District of Maricopa County (FCDMC) and the Town had made major drainage improvements to the dam, including raising the elevation of the dam crest, extending the width of the emergency spillway, and adding an auxiliary outlet structure. The addition of the auxiliary outlet structure substantially increased the outlet flow volume during smaller storms, and it provided an opportunity to increase the storage volume in the three major washes around the ballfields prior to inundating a substantial area of the ballfields.

Overflow from the channels onto the ballfields has been an on-going issue during many periodic storm events at Golden Eagle Park. Ball teams have often held a pre-season work day to remove rocks from the ballfields, and Town staff have removed sediment from the channels.

In addition to the flow overtopping the small channels around the ballfields, on October 2nd, 2018, precipitation from Hurricane Rosa exposed the following additional issues at Golden Eagle Park:

- The catch basin on Golden Eagle Blvd. was overtopped, and the flow eroded a steep slope side slope area on Golden Eagle Blvd.
- The outlet channel from that catch basin was overtopped, creating flow across the ballfields.
- The dam outlet grates, at the inlets to both the 1-1/2 42" pipes and the RCBC, clogged with excessive vegetation. This is believed to have created a higher backwater elevation than would have otherwise occurred.
- The lower level of the Restroom/Control Building was flooded to a depth of approximately 30 inches. This building's lower level was designed to lie below the 100-year water surface elevation. It should be noted that activities within the 100-year flooding extents are limited to parking and for storage of non-hazardous materials in accordance with FEMA requirements. Existing ventilation adjacent to building garage doors allow equalization of the floodwater level. The structure is designed for saturated soil conditions, and its electrical fixtures and outlets are located above the 100-year flood level. The flooding caused the following issues within the building:
 - Vehicles required repair.
 - Many stored materials had to be discarded.
- The ballfields required extensive repairs and renovations caused by the floodwater, including:
 - Removal of small vegetative matter from the ballfield fences.
 - Removal of silt and sediment from the grass and infield mix surfaces.
 - Irrigation box cleaning and irrigation system repairs.
 - Replacement of a substantial amount of the infield mix.
- Cloudburst Wash overtopped a Park pedestrian bridge. The outflow created damage at a Ramada area before returning to the channel area.
- Ashbrook Wash created substantial erosion downstream from a pedestrian crossing, located between Golden Eagle Boulevard and Sierra Madre.

JE Fuller has recently submitted to FEMA, a floodplain re-delineation of Ashbrook Wash (downstream from Golden Eagle Park Dam) and of Cloudburst Wash (which goes upstream from Golden Eagle Park Dam). (i.e. When approved, the 100-year HWE at Golden Eagle Park will change.)

PROJECT NEED AND GOALS

The Town would like to develop a design to reduce inundation during lower-magnitude precipitation events (< 100-year). The conceptual design previously provided by the Town will be used as a starting point for the study. It is also understood that after Town approval of the present study and conceptual design, a separate contract or work order is anticipated to be requested to design the proposed improvements. It is anticipated that the Town will construct the improvements using an On-call Contractor(s) and/or purchase order(s), with some feasible work being performed by Town forces and/or by other adjacent landowner(s).

The goal of this project is to provide the highest level of protection from inundation within the ballfields within the known physical constraints of the area and for a cost and maintenance burden deemed feasible by the Town.

SCOPE OF SERVICES

A concept design study will be prepared to mitigate the damage to Golden Eagle Park facilities during events smaller than a 100-year storm. The following tasks below encompass the scope of services for this assessment.

- **Task 1: Project Management and Coordination.** This task includes up to three (3) in-person progress meetings as well as one (1) field assessment.
- **Task 2: Data Collection.** This task includes the collection of all pertinent data for this study (e.g., topography, precipitation, aerial imagery, drainage complaints, maintenance reports, etc.). JE Fuller will provide a list of requested information to the Town (and FCDMC where applicable) upon a notice to proceed. JE Fuller will leverage existing hydrologic modeling for the area that was completed as part of the Ashbrook Wash re-delineation project.
- **Task 3: Historical Data Analysis.** All available data relevant to the October 2018 event will be compiled to re-construct the events that led to the inundation of the park and to attempt to identify the causation of the inundation. Data used in this analysis may include aerial imagery, photography, stream gage data, and numerical modeling.
- **Task 4: Establish Feasible Design Level.** Hydraulic modeling of the impoundment area will be performed to model how flow moves through the channels to the principle outlets of the dam. Two-dimensional modeling may be performed to provide an accurate depiction of inundation. A range of recurrence interval events will be simulated by applying ratios to the 100-year hydrographs obtained in the Ashbrook study. Other pertinent hydraulic features (e.g., rating curves on culvert inlets) may also be explored to determine the target level of protection for mitigation. The final design level will be selected by the Town with input from JE Fuller.
- **Task 5: Alternative Development.** Alternatives will be developed that address the flooding issues known to the Town using the design level determined in Task 4. The improvements listed in the Town's pre-study concept plan will also be included in the alternatives development. It is expected that alternatives will include elements of trash rack modifications, potential walls or other conveyance improvements along each of the washes flowing toward the principal outlets,

erosion protection, and sedimentation/debris basins. The concept design may include improvements needed upstream from the park (e.g., sedimentation basin(s) on the adjacent, upstream golf course, as well as nearby erosion mitigation – most notably at and downstream from the pedestrian “sidewalk” crossing Ashbrook Wash between Golden Eagle Boulevard and Sierra Madre.

- **Task 6: Alternative Selection and Conceptual Design.** The alternatives developed in Task 5 will be ranked based on metrics agreed upon by the Town and JE Fuller (e.g., cost, constructability, level of protection, etc.). The selected alternative will be refined into a 15% conceptual design. A concept-level construction cost estimate will also be developed. It is anticipated that the Town will construct the improvements using an On-call Contractor(s) and/or purchase order(s), with some feasible work being performed by Town forces and/or by other adjacent landowner(s).
- **Task 7: Presentation.** JE Fuller will present, in-person, the conceptual design to Town staff as well as a separate presentation for the Town Council.
- **Task 8: Report.** A technical report will be provided to document the steps taken in the analysis and to outline the results. A concept-level (estimated contractor pricing) will also be provided. Several large-scale maps will be provided to better disseminate the conceptual design components. Two hard copies of the final report and map submittals will be provided.

FEE AND SCHEDULE

JE Fuller can complete the above tasks for a fee of \$32,438. Please see the attached fee estimate for a breakdown of the proposed fee.

Thank you again for requesting our services. We are looking forward to working with you on this project.

Sincerely,
JE Fuller/Hydrology & Geomorphology, Inc.



Richard Waskowsky, PE
Vice-President

Golden Eagle Park Drainage Improvements - Conceptual Design

Fee Estimate

April 17, 2019

Task	Principal	Project Manager	Project Engineer	EIT	
	\$ 142	\$ 125	\$ 118	\$ 95	
1 Project Management and Coordination	4	18	16		\$ 4,706
2 Data Collection	1	2		2	\$ 582
3 Historical Data Analysis	2	12	14	4	\$ 3,816
4 Establish Feasible Design Level	2	8	16	24	\$ 5,452
5 Alternative Development	8	14	18		\$ 5,010
6 Alternative Selection and Conceptual Design	2	12	28	20	\$ 6,988
7 Presentation	6	10		4	\$ 2,482
8 Report		8	12	8	\$ 3,176

Labor Total: \$ 32,212

Direct Costs

Mileage (390 mi @ \$0.58/mi) \$ 226

Direct Costs Total: \$ 226

Total \$ 32,438