Original

TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT

INVITATION FOR BID

Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

Solicitation Number:	**DS 2011-02**
Solicitation Title:	**Wash and Dam Maintenance**
Release Date:	**September 14, 2011**
MANDATORY Prospective Bidders' Conference:	**September 19, 2011** **2:00 PM** (local-time, Phoenix, Arizona) Fountain Conference Room 16705 East Avenue of the Fountains Fountain Hills, Arizona 85268
Final Date for Inquiries:	**September 21, 2011**
Bid Deadline:	**September 28, 2011** **2:00 PM** (local-time, Phoenix, Arizona)
Bid Opening:	**September 28, 2011** **2:00 PM** (local-time, Phoenix, Arizona)
Department Representatives:	**Raymond Rees** **rrees@fh.az.gov** **480-816-5180** **Paul Mood** **pmood@fh.az.gov** **480-816-5129**

In accordance with the Town of Fountain Hills Procurement Code, competitive sealed Bids for the services specified herein will be received by the Town Clerk at the Town Clerk's Office at the above-referenced location until the date and time cited below (the "Bid Deadline"). Bids received by the Bid Deadline shall be publicly opened and the Bid Price read. Bids shall be in the actual possession of the Development Services Department on, or prior to, the Bid Deadline Date. Late Bids shall not be considered except as provided in the Town Procurement Code. Bids shall be submitted in a sealed envelope with the Solicitation Number and the Bidder's name and address clearly indicated on the front of the envelope.

There is no charge for the first three sets of Plans and Specifications.
There is a **$30** charge for each additional set.
Plans and Specifications may be picked up at the Town of Fountain Hills or downloaded at www.fh.az.gov.

* The Town of Fountain Hills reserves the right to amend the solicitation schedule as necessary.

TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT
DS 2011-02

OFFER

The undersigned (the "Bidder") hereby offers this Bid (the "Offer") and certifies that Bidder has read, understands and agrees to fully comply with, and be contractually bound by, all terms and conditions as set forth in this IFB, the Contract (as defined below), and any amendments thereto, together with the Scope of Work, Specifications, Exhibits and other documents included as part of this Contract.

Arizona Transaction (Sales) Privilege Tax License Number: 07 498787-Z Federal Employer Identification Number: 86-1038988 ARTISTIC LAND MANAGEMENT, INC Contractor Name 506 E. BOSTON CIRCLE Address CHANDLER AZ 85225 City State Zip Code	For Clarification of this Bid contact: Name: JOSE HERNANDEZ Telephone: 480. 821. 4966 Facsimile: 480. 964. 5191 Email: JOSE@almine.net Jose Hernandez **Authorized Signature for Contractor** JOSE HERNANDEZ Printed Name PRESIDENT Title

ACCEPTANCE OF OFFER AND NOTICE OF AWARD (FOR TOWN OF FOUNTAIN HILLS USE ONLY)

Effective Date: 10/20/11 Contract No. C2012-110 Official File: _____

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

J. A. Ghetti
Julie Ghetti, Interim Town Manager

ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney

ARTICLE I - DEFINITIONS

For purposes of this Invitation for Bids, the following definitions shall apply:

"Bid" or "Offer" means a responsive bid or quotation submitted by a Bidder in response to this IFB.

"Bid Deadline" means the date and time set forth on the cover of this IFB for the Town Clerk to be in actual possession of the sealed Bids.

"Bid Opening" means the date and time set forth on the cover of this IFB for opening of sealed bids.

"Bidder" means any person or firm submitting a competitive Bid in response to this IFB.

"Business Days" shall mean Town working days.

"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 fact at the time of the submission and (ii) the information shall be so identified wherever it appears.

"Contract" means, collectively, the (i) the Offer, (ii) Article I - Definitions, (iii) Article II – Bid Process; Bid Award, (iv) Article III - General Terms & Conditions, (v) Article IV – Special Conditions, if any, (vi) the Scope of Work, attached hereto as Exhibit A, (vii) the Price Sheet, attached hereto as Exhibit B, (viii) the Subcontractor Listing, attached hereto as Exhibit C, (ix) the Bid Bond, attached hereto as Exhibit D, (x) the Licenses; DBE/WBE Status Sheet, if any, attached hereto as Exhibit E, (xi) References, attached hereto as Exhibit F, (xii) Acknowledgement of Addenda Received attached hereto as Exhibit G, (xiii) the Notice of Award, (xiv) the Notice to Proceed, (xv) any approved Change Order or Amendment, (xvi) the Contractor's Certificates of Insurance and a copy of the Declarations Page(s) of the insurance policies and (xvii) Performance and Payment Bonds, if any.

"Contractor" means the individual, partnership, or corporation who has submitted a Bid in response to this IFB and who, as a result of the competitive bidding process, is awarded a contract for materials or services by the Town.

"Contract Time" means the time paid during which the Contractor must complete all of the Work related to the Project.

"Days" means calendar days unless otherwise specified.

"Department Representative" means the Town employee, as designated on the cover of this IFB, who has specifically been designated to act as a contact person to the Bidders and/or Contractor, and who is responsible for monitoring and overseeing the Contractor's performance under the Contract and for providing information regarding details pertaining to the Work.

"Invitation for Bids" or "IFB" means this request by the Town for participation in the competitive bidding process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Bids for the materials and/or services set forth above in compliance with the provisions of the Town Procurement Code.

"MAG Specifications" means, collectively, the "Uniform Standard Specifications for Public Works Construction," current edition as of the date of Contract award and the "Uniform Standard Details for Public Works Construction," current edition as of the date of Contract award, which are sponsored and distributed by the Maricopa Association of Governments ("MAG") and any amendments or supplements adopted by the Town.

"Materials" means any personal property, including equipment and supplies provided by the Contractor in conjunction with the Contract and shall include, in addition to materials incorporated in the Project, equipment and other material used and/or consumed in the performance of the Work.

"Multiple Award" means an award of an indefinite quantity contract for one or more similar products, commodities or services to more than one Bidder.

"Price" means the total expenditure for the defined Project, inclusive of all materials, commodities or services.

"Procurement Agent" means the Town Manager or authorized designee.

"Procurement Code" means the Town of Fountain Hills Procurement Code, as amended from time to time.

"Project" means the purpose and work described in the "Purpose/Scope of Work" as set forth in Section 2.1 of the IFB.

"Services" means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance and as further defined in the Contract. This term does not include "professional services" as defined in the Procurement Code.

"Specification" means any description of the physical characteristics, functional characteristics, or the nature of a commodity, product, supply or services. The term may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

"Subcontractor" means those persons or groups of persons having a direct contract with the Contractor and those who furnish material worked to a special design according to the plans and/or Specifications for this Work, and includes those who merely furnish materials.

"Town" means the Town of Fountain Hills, an Arizona municipal corporation.

"Vendor" means any firms, entities or individuals desiring to prepare a responsive Bid in response to this IFB.

"Work" means all labor, materials and equipment incorporated or to be incorporated in said construction that are necessary to accomplish the construction required by this Contract.

ARTICLE II – BID PROCESS; BID AWARD

2.1 Purpose/Scope of Work. The Work included in this Project consists of providing an eight-member crew, chipper, truck, chainsaws and hand tools to cut, remove and chip trees and brush in washes located within the Town for fire hazard elimination and drainage control. The Town is issuing this IFB is to secure a qualified Contractor to perform the Work as more particularly described in the Scope of Work, attached hereto as Exhibit A, and incorporated herein by reference (the "Services"). Bidders must submit Bids encompassing the entire Project. Failure to do so may result in a determination that the Bid is non-responsive.

All applicable federal rules and regulations are incorporated by reference herein notwithstanding the fact that they may not be specifically referenced in this solicitation.

2.2 Authority; Amendment of IFB. This IFB and resultant Contract is issued under the authority of the Town. No alteration hereof may be made without the express written approval of the Town in the form of an official IFB or Contract amendment. Any attempt to alter this IFB/Contract without such approval is a violation of this Contract and the Town Procurement Code. Any such action is subject to the legal and contractual remedies available to the Town including, but not limited to, Contract cancellation and suspension and/or debarment of the Bidder or Contractor.

2.3 Preparation/Submission of Bid. Vendors are invited to participate in the competitive bidding process for the Services outlined in this IFB. Bidders shall review their Bid submissions to ensure the following requirements are met.

A. Irregular/Non-responsive Bids. The Town will consider as "irregular" or "non-responsive" and may reject any Bid not prepared and submitted in accordance with the IFB and Scope of Work, or any Bid lacking sufficient information to enable the Town to make a reasonable determination of compliance to the specifications outlined in the Scope of Work. Unauthorized exceptions, conditions, limitations, or provisions shall be cause for rejection. Bids may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the Town:

1. Bidder does not meet the minimum required skill, experience or requirements to perform the Work or provide the Services.

2. Bidder has a past record of failing to fully perform or fulfill contractual obligations.

3. Bidder cannot demonstrate financial stability.

4. Bid submission contains false, inaccurate or misleading statements that, in the opinion of the Town Manager or authorized designee, is intended to mislead the Town in its evaluation of the Bid.

B. Specification Minimums. Bidders are reminded that the specifications stated in the Scope of Work as part of this IFB are the minimum levels required and that Bids submitted must be for products that meet or exceed the minimum level of all features specifically listed in this IFB. Bids offering less than the minimums specified are not responsive and should not be submitted. It shall be the Bidder's responsibility to carefully examine each item listed in the Scope of Work.

C. Required Submittal. Bidders shall provide **one** complete, fully executed **original** of this IFB, signed in ink by a person authorized to bind the Bidder, together with all completed, required attachments as specified below, to be considered a responsive Bid:

1. Offer
2. Price Sheet
3. List of Subcontractors, in a separate, sealed envelope

3. Bid Bond
4. Licenses; /DBE & MBE Status
5. References
6. Federal Requirements, if applicable
7. Acknowledgment for each Addendum received, if any

D. Bidder Responsibilities. All Bidders shall (1) examine the entire Bid package, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Bid and (4) submit the entire, completed Bid package by the official Bid Deadline. Late Bids shall not be considered. Bids not submitted with an **original, signed** Offer page by a person authorized to bind the Bidder shall be considered non-responsive. Negligence in preparing a Bid confers no right of withdrawal after the Bid Opening.

E. Sealed Bids. All Bids shall be sealed and clearly marked with the IFB title and number on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Bid.

F. Address. All Bids shall be directed to the following address: Town Clerk, 16705 East Avenue of the Fountains, Fountain Hills, Arizona 85268, or hand-delivered to the Town Clerk's office.

G. Bid Forms. All Bids shall be on the forms provided in this IFB. It is permissible to copy these forms if required. Telegraphic (facsimile), electronic (email) or mailgram Bids will not be considered.

H. Modifications. Erasures, interlineations, or other modifications in the Bid shall be initialed in original ink by the authorized person signing the Bid.

I. Withdrawal. At any time prior to the specified Bid Opening, a Bidder (or designated representative) may amend or withdraw its Bid. Facsimile, electronic (email) or mailgram Bid amendments or withdrawals will not be considered. No Bid shall be altered, amended or withdrawn after the specified Bid Deadline.

J. Prices. Bid prices shall be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

2.4 Inquiries; Interpretation of Scope of Work, Specifications and Drawings.

A. Inquiries. Any question related to the IFB, including any part of the Scope of Work, specifications or other Contract Documents, shall be directed to the Department Representative(s) whose name appears on the cover page of this IFB. Questions shall be submitted in writing by the date indicated on the cover of this IFB; the Town will not respond to any inquiries submitted later than the Final Date for Inquiries. The Vendor submitting such inquiry will be responsible for its prompt delivery to the Town. Any correspondence related to the IFB shall refer to the title and number, page and paragraph. However, the Bidder shall not place the IFB number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Bid and may not be opened until the Bid Opening. Any interpretations or corrections of the proposed Contract Documents will be made only by addenda duly approved and issued by the Town. The Town will not be responsible for any other explanations or interpretations of the Contract Documents.

B. Addenda. It shall be the Vendor's responsibility to check for addenda issued to this IFB. Any addendum issued by the Town with respect to this IFB will be available at Fountain Hills Town Hall, 16705 East Avenue of the Fountains, Fountain Hills, Arizona 85268.

C. Proposal Quantities. It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and the material to be furnished under this Contract, which have been estimated as stated in the Bidder's Offer, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the Bidder's Offers presented for the Services under this Contract. The selected Contractor agrees that the Town shall not be held responsible if any of the quantities shall be found to be incorrect and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of Work as estimated and the Services actually provided. If any error, omission or misstatement is found to occur in the estimated quantities, the same shall not (1) invalidate this Contract or the whole or any part of the Work in accordance herewith and for the prices herein agreed upon and fixed therefore, (2) excuse Contractor from any of the obligations or liabilities hereunder or (3) entitle Contractor to any damage or compensation except as may be provided in this Contract.

2.5 Prospective Bidders' Conference. A prospective bidders' conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this IFB. This conference may be designated as mandatory or non-mandatory on the cover of this IFB. Bids shall not be accepted from Bidders who do not attend a mandatory prospective bidders' conference. Vendors are strongly encouraged to attend those prospective bidder's conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this IFB in order to prevent any misunderstanding of the Town's requirements. Any doubt as to the requirements of this IFB or any apparent omission or discrepancy should be presented to the Town at this conference. The Town will then determine if any action is necessary and may issue a written amendment or addendum to the IFB. Oral statements or instructions will not constitute an amendment or addendum to this IFB.

2.6 New Materials. All material to be utilized by the Contractor and included in the Bid shall be new, unless otherwise stated in the Scope of Work.

2.7 Prices. Services shall be provided at the unit prices as set forth in the Price Sheet attached hereto as Exhibit B. Bid prices shall be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price shall prevail.

2.8 Subcontracts. Bidders shall submit a listing of all proposed Subcontractors or suppliers that the Bidder intends to utilize relating to the Project, in the form attached hereto as Exhibit D. Failure on the part of the Bidder to complete or improperly complete the Subcontractor Listing will constitute sufficient cause for rejection. Proposed Subcontractors shall qualified and have the requisite licenses and be licensed to do business in the State of Arizona. The Bidder may list itself by writing "Self" adjacent to the category of work for which the Bidder assumes responsibility for performance of the Work assumes the responsibility of the Subcontractor. Subcontractor Listings submitted by unsuccessful Bidders will be returned, unopened, unless required in order to determine responsibility and responsiveness of the Subcontractors and the Bidder's Offers. The Town reserves the right to review and reasonably object to the Subcontractors proposed, and the selected Contractor shall not retain a Subcontractor to which the Town has a reasonable objection.

2.9 Payment; Discounts. Any Bid that requires payment in less than 30 Days shall not be considered. Payment discounts of 30 Days or less will be deducted from the Bid Price in determining the low Bid. The Town shall be entitled to take advantage of any payment discount offered, provided payment is made within the discount period. Payment discounts shall be indicated on Price Sheet.

2.10 Taxes. The Town is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item. It is the sole responsibility of the Bidder to determine any applicable State tax rates and calculate the Bid accordingly. Failure to accurately tabulate and applicable taxes may result in a determination that a Bid is non-responsive. The Bidder shall not rely on, and shall independently verify, any tax information provided by the Town.

2.11 Federal Funding. It is the responsibility of the Bidder to verify and comply with federal requirements that may apply to the Work (the "Federal Requirements"). It is also the responsibility of the Bidder to incorporate any necessary amounts in the Bid to accommodate for required federal record keeping, necessary pay structures or other matters related to the Federal Requirements. Federal Requirements, if any, shall be attached hereto as Exhibit G and incorporated herein by reference. In addition to any applicable Federal Requirements, this procurement is subject to a number of state and Town regulations. In general, where these rules conflict, the more stringent law or rule applies.

2.12 Cost of Bid/Proposal Preparation. Bids submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Town does not reimburse the cost of developing, presenting or providing any response to this solicitation; the Bidder is responsible for all costs incurred in responding to this IFB. All materials and documents submitted in response to this IFB become the property of the Town and will not be returned.

2.13 Public Record. All Bids shall become the property of the Town and shall become a matter of public record available for review, subsequent to the award notification.

2.14 Confidential Information. If a Vendor/Bidder believes that a Bid, Scope of Work, specification, or protest contains information that should be withheld from the public record, a statement advising the Department Representative(s) of this fact shall accompany the submission and the information shall be identified. The information identified by the Vendor or Bidder as confidential shall not be disclosed until the Town Manager makes a written determination. The Town Manager shall review the statement and information and shall determine in writing whether the information shall be withheld. If the Town Manager determines to disclose the information, the Town Manager shall inform the Vendor or Bidder in writing of such determination.

2.15 Vendor Licensing and Registration. Prior to the award of this Contract, the successful Bidder shall (A) be licensed with the Arizona Corporation Commission to do business in Arizona and (B) have a Fountain Hills Business License on file with the Town.

2.16 Certification. By submitting a Bid, the Bidder certifies:

A. No Collusion. The submission of the Bid did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a Town employee, officer, agent or elected official in connection with the submitted Bid or a resultant Contract. In the event that the resultant Contract is cancelled 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 one hundred fifty percent (150%) of the gratuity.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of this Contract.

E. Subcontractor Qualification. That the Subcontractors and suppliers submitted with its Bid are qualified to perform the Work in accordance with the requirements of the Contract Documents.

F. No Signature/False Statement. Failure to sign the Bid, or signing it with a false statement, shall void the submitted Bid and any resulting Contract and the Bidder may be debarred from further bidding in the Town.

2.17 Bid Bond. All Vendors desiring to prepare a responsive Bid shall submit a non-revocable bid security payable to the Town in the amount of ten percent (10%) of the total Bid price. This security shall be in the form of a bid bond, certified check or cashier's check and must be in the possession of the Department Representatives by the Bid Deadline. All bid security from Contractor(s) who have been issued a Notice of Award shall be held until the successful execution of all required Contract Documents and bonds. If the Contractor fails to execute the required contractual documents and bonds within the time specified, or ten Days after Notice of Award if no period is specified, the Contractor may be found to be in default and this Contract terminated by the Town. In case of default, the Town reserves all rights inclusive of, but not limited to, the right to purchase material and/or to complete the Work and to recover any actual excess costs associated with such completion from the Contractor. All bid bonds shall be executed in the form attached hereto as Exhibit E, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority from the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All insurers and sureties shall have, at the time of submission of the proposal, an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company. As soon as is practicable after the completion of the evaluation, the Town will (A) issue a Notice of Award for those Offers accepted by the Town and (B) return all checks or bonds to those Bidders who have not been issued a Notice of Award.

2.18 Award of Contract.

A. Multiple Award. The Town may, at its sole discretion, include Bidder's Offer as part of a Multiple Award.

B. Line Item Option. Unless the Bidder's Offer indicates otherwise, or unless specifically provided within the Contract, the Town reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the Town. The Town's flexibility with respect to the method of award also includes any items bid as alternates, which may be accepted or rejected, in whole or in part, at the Town's sole discretion.

C. Evaluation. The evaluation of this Bid will be based on, but not limited to, the following: (1) compliance with Scope of Work, (2) Price, including alternates, if any and (3) Bidder qualifications to perform the Work.

D. Waiver, Rejection, Reissuance. Notwithstanding any other provision of this IFB, the Town expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Bids or portions thereof and (3) reissue an IFB.

E. Offer. A Bid is a binding offer to contract with the Town based upon the terms, conditions, Scope of Work and specifications contained in this IFB and the Bidder's responsive Bid, unless any of the terms, conditions, Scope of Work or specifications is modified by a written addendum or Contract amendment. Bids become binding Contracts when the Acceptance of Offer and Notice of Award is executed in writing by the Town. Bidder Offers shall be valid and irrevocable for **60** days after the Bid Opening.

F. Protests. Any Bidder may protest this IFB issued by the Town, the proposed award of a Contract, or the actual award of a Contract. All protests will be considered in accordance with the Town Procurement Code.

ARTICLE III – GENERAL TERMS AND CONDITIONS

3.1 Term. This Contract shall be effective from the date it is fully executed by the Town and remain in full force and effect for one year thereafter (the "Initial Term"), unless terminated as otherwise provided herein. After the expiration of the Initial Term, this Contract may be renewed for up to four successive one-year terms (each a "Renewal Term") if (A) it is deemed in the best interests of the Town, subject to availability and

appropriation of funds for renewal in each subsequent year, (B) at least 30 days prior to the end of the then-current term of the Contract, the Contractor requests, in writing, to extend this Contract for an additional one-year term and (C) the Town approves the additional one-year term in writing (including any price adjustments approved as part of this 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 Contract shall cause this Contract to terminate at the end of the then-current term of this Contract; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Contract. The Initial Term and any Renewal Terms are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

3.2 Scope of Work. Contractor shall provide the Services on an as-required basis as more particularly set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.

A. Reference Standards. The Contractor shall perform the Services required in conformance with the MAG Specifications and any amendments or supplements adopted by the Town, each of which is incorporated herein by reference. In the event of a conflict between the MAG Specifications and Town amendments or supplements adopted by the Town, the Town amendments or supplements thereto shall prevail.

B. Inspection, Safety and Compliance. Contractor must inform itself fully of the conditions relating to the Services and the employment of labor thereon. Failure to do so will not relieve the Contractor of its obligation to furnish all material and labor necessary to carry out the provisions of this Contract. Insofar as possible the Contractor, in carrying out its work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor. By executing the Offer, Contractor affirms that it has inspected the jobsite and has thoroughly reviewed this Contract and is not relying on any opinions or representations of Town.

3.3 Compensation. The Town shall pay Contractor for the Services at the rates as set forth in the Price Sheet, attached hereto as Exhibit B and incorporated herein by reference.

3.4 Payments; Price Escalation. 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. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. Price increases may be requested by the Contractor not less than 90 days prior to the anniversary date of the Contract. Price increases will become effective only after Council approval and will be effective for at least one year from the date of approval. Price increases will be applied to the unit pricing in this Contract as a percentage increase. The percentage increase in the unit pricing may not exceed the percent of increase in the Phoenix Metropolitan "Consumers Price Index" for all items for the Percent Change from the Year-Ago Quarter as published by the Department of Labor Urban Consumer Price Index; provided, however, that notwithstanding the calculation resulting from application of the index, each annual increase shall not be allowed to exceed five percent (5%) of the then-current Contract Price.

3.5 Documents. All documents prepared and submitted to the Town pursuant to this Contract shall be the property of the Town.

3.6 Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Contract. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Contract, 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 of substantially equal ability and qualifications.

3.7 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.

3.8 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 Contract. The Town has no obligation to provide tools, equipment or material to Contractor.

3.9 Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Contract and to the highest professional standards in the field.

3.10 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 Contract. 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.

3.11 Insurance.

A. General.

1. 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 Contract at the Town's option.

2. 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 Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract 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 Contract.

3. Additional Insured. All insurance coverage and self-insured retention or deductible portions, 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 Contract, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.

4. 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 Contract are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Contract.

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

6. 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.

7. 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.

8. Use of Subcontractors. If any work under this Contract is subcontracted in any way, Contractor shall execute written agreement(s) with its Subcontractors containing the indemnification provisions set forth in this subsection and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

9. Evidence of Insurance. Prior to commencing any work or services under this Contract, 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 Contract, 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 Contract 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 Contract. 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 Contract. In the event any insurance policy required by this Contract is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the Town's acceptance of the Contractor's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Contract expire during the life of this Contract, 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 Contract shall be identified by referencing this Contract. A $25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Contract. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Contract will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

a. The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

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

(ii) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(iii) Excess Liability - Follow Form to underlying insurance.

b. Contractor's insurance shall be primary insurance as respects performance of the Contract.

c. 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 Contract.

d. A 30-day advance notice cancellation provision. If ACORD certificate of insurance form 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.

B. Required Insurance Coverage.

1. 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 Contract, 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.

2. 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 Contract. 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 Contract, 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.

3. Professional Liability. If this Contract is the subject of any professional services or work, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Contract, 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. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Contractor shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

4. 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 Contract 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.

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

3.12 Applicable Law; Venue. This Contract shall be governed by the laws of the State of Arizona and suit pertaining to this Contract may be brought only in courts in the State of Arizona.

3.13 Termination; Cancellation.

A. For Town's Convenience. This Contract 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 materials delivered and Services performed to the termination date.

B. For Cause. This Contract may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Contract's terms, through no fault of the party initiating the termination. 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.

C. Due to Work Stoppage. This Contract 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.

D. Conflict of Interest. This Contract is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Contract 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 Contract on behalf of the Town or any of its departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a Contractor to any other party of the Contract with respect to the subject matter of the Contract.

E. Gratuities. The Town may, by written notice to the Contractor, cancel this Contract 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 Contract. In the event this Contract is cancelled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor an amount equal to 150% of the gratuity.

F. Contract Subject to Appropriation. This Contract is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Contract for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Contract and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Contract and the Town shall keep the Contractor fully informed as to the availability of funds for the Contract. The obligation of the Town to make any payment pursuant to this Contract 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 Contract during any immediately succeeding fiscal year, this Contract shall terminate at the end of then-current fiscal year and the Town and the Contractor shall be relieved of any subsequent obligation under this Contract.

3.14 Miscellaneous.

A. Independent Contractor. The Contractor acknowledges and agrees that the Services provided under this Contract 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 Contract so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 3.2 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 Contract.

B. Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Contract ensure that it and any person for whom the Contractor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (1) existing and future Town and County ordinances and regulations, (2) existing and future state and federal laws and (3) existing and future Occupational Safety and Health Administration standards.

C. Amendments. This Contract 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.

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

E. Severability. The provisions of this Contract 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 the Contract which may remain in effect without the invalid provision or application.

F. Relationship of the Parties. 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 is advised that taxes or Social Security payments will not be withheld from any Town payments issued hereunder and Contractor agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Contract.

G. Entire Agreement; Interpretation; Parol Evidence. This Contract 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 Contract are hereby revoked and superseded by this Contract. 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 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 party drafting the Contract. 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.

H. Assignment. No right or interest in this Contract shall be assigned 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 Contract by Contractor.

I. 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 Contract whether or not Subcontractors are used.

J. Rights and Remedies. No provision in this Contract 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 Contract. The failure of the Town to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, 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 Contract or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Contract.

K. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract 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.

L. 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.

M. Offset.

1. 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 Contract.

2. 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.

N. Notices and Requests. Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (3) given to a recognized and reputable overnight delivery service, to the address set forth below or (4) delivered by facsimile transmission to the number set forth below:

If to the Town:
Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Facsimile: (623) 333-0100
Attn: Julie Ghetti, Interim Town Manager

With copy to:
GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Contractor: _____
_____
_____
Facsimile:_____
Attn:_____

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 (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (3) 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, or (4) when received by facsimile transmission during the normal business hours of the recipient. 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.

O. 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 Contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Contract. 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 Contract.

P. Records and Audit Rights. Contractor's and its Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any Contractor and its Subcontractors' employees who perform any work or services pursuant to this Contract to ensure that the Contractor and its Subcontractors are complying with the warranty under subsection 3.14(Q) below (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 (1) 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 Contract and (2) evaluation of the Contractor's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 3.14(Q) 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 Contract for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Contract. 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 Contract.

Q. 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 Contract and may result in the termination of this Contract by the Town.

R. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the Town determines that the Contractor submitted a false certification, the Town may impose remedies as provided by law including terminating this Contract pursuant to subsection 3.13(B) above.

S. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Contract, the IFB, Scope of Work, the Price Sheet and the Contractor's Bid, the documents shall govern in the order listed herein.

T. Non-Exclusive Contract. This Contract 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.

U. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the Town, at their discretion and with the agreement of the awarded Contractor. Contractor may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Services at the prices and under the terms and conditions of this Contract, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Contract shall be transacted solely between the requesting Eligible Procurement Unit and Contractor. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The Town assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Contract. The Town shall not be responsible for any disputes arising out of transactions made by others.

EXHIBIT A
TO
INVITATION FOR BID NO. DS 2011-02

[Scope of Work]

See following pages.

SCOPE OF WORK
WASH AND DAM MAINTENANCE PROJECT - DS 2011-02

WORK AREAS

- Primary work areas will be as shown on the attached Wash Maintenance Map.
- Locations are determined by the Fire Department Staff and Development Services Department. Vegetation growth and necessary drainage are the two main factors for priority locations.
- Six (6) earthen dams will be maintained, depending on requirements by State required inspections. This work will be included in the allotted 80-day period.

SUPERVISION BY CONTRACTOR

The Contractor will supervise and direct the work necessary for the Services. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain a qualified supervisor or superintendent (foreman/lead person) who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The representative shall have full authority to act on behalf of the Contractor and all communications given to the representative shall be as binding as if given to the Contractor. The representative shall be present on the site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all provisions of MAG, Section 105.5 will be applicable.

WORKING HOURS

Working hours will be 7:00 AM to 3:30 PM during winter hours (October through February), Monday through Friday, with a half-hour lunch period unless otherwise authorized by the Contract Administrator. No travel time is permitted; work hours start when Contractor is at the work site.

VEGETATION REMOVAL

Vegetation to be cut:

- Tree canopies will be cut four (4) feet off the existing ground.
- Salt cedars, desert broom, and all dead trees are to be cut down to 6 inches above the ground.
- All cut vegetation must be chipped using a chipper; chips are to be spread evenly along the slopes of the wash. Piling of chips is prohibited. Layers of chips on slopes should not exceed 4 inches. No material can be left in the flow line of the wash.
- Native vegetation and wildlife shall be preserved and protected.
- All culvert inlets and outlets will be clear-cut fifty (50) feet from the culvert.
- Remove and haul off all trash or items that cannot be chipped.
- Any necessary trash bags will be supplied by the Town.
- Any associated landfill fees are the Contractor's responsibility.

Vegetation to remain:

- Native trees and shrubs (this is a sample list)
- Mesquites
- Cottonwoods
- Palo Verdes
- Creosotes
- Willows
- Brittlebush, bursage and other native desert plants.

- Prune dead wood portions of trees that remain.
- Pampas grass

Note: Any vegetation that the Contract Administrator determines would restrict drainage will be removed.

LABOR REQUIREMENTS

- Working areas are topographically steep and subject to adverse conditions including rattlesnakes, scorpions and other desert wildlife.
- Bid will include 8 laborers for 8 hours per day, 5 days a week, Monday through Friday. The 8 hours will be working time at job site, not including travel time to and from the job site. All workers shall be physically able, competent workers as determined by the Contract Administrator, or the designee.
- One of the worker(s) shall be designated and appropriately trained as a working group leader (foreman, lead person).
- At a minimum, the foreman and at least one other workman shall be fluent in reading, writing and speaking English.
- Non-worker(s) including pets, children or spouses will not be allowed in the work area.
- Minimum age of worker(s) is 18.
- Include in the bid list any special qualifications of specific worker(s).
- Worker(s) not satisfactorily performing are subject to dismissal by the Contract Administrator.
- Worker(s) shall be appropriately dressed and equipped with appropriate safety gear. Dress shall include sturdy work boots and long, heavy-duty pants. Appropriate safety gear may include but not be limited to ear plugs, chain guards, goggles, chaps or leggings.
- Rain-out and flood-out days: 2 hours show up time, 4 hours pay if working longer than 2 hours, and full days pay if working more than 4 hours. This does not include working in unsatisfactory conditions.
- Failure to provide the specified number of functional worker(s), equipment, chainsaws or hand tools will result in reduced payment. Continued or repeated failure will result in dismissal by the Contract Administrator.
- Sanitary facilities: Contractor shall supply drinking water for all worker(s). The contractor will supply portable toilet facilities.
- Personal vehicles of worker(s) shall not be driven into the wash area or work area. Personal vehicles shall be parked at the south end of the Town Hall parking lot, unless another location is designated by the Contract Administrator.

EQUIPMENT REQUIRED

- Contractor will supply all necessary equipment and tools to do the work; i.e., chains saws, gloves, shovels, etc.
- One (1) Chipper: trailer-mounted, commercial/industrial grade chipper capable of handling a minimum of 8 inch trunk limb, minimum 35 hp.
- One (1) Truck: for transporting of worker(s) into the wash and transport of the chipper. The truck should be a minimum of a 1-ton, 4-wheel drive. It must have a towing set up to move the chipper from one site to another.
- Chain saws: Minimum six (6) chainsaws required on the job. Additional chainsaws will be required, if needed, such that three (3) are cutting at all times.
- Misc. hand tools: Hand tools should include shovels, rakes, hand saws, pruners, loppers, pick, rake, rope, chains and other equipment for dragging materials. Some or all of these may be required depending on the type of work encountered.
- Bid includes all gas, oil and replacement parts for tools and equipment.
- Crew leader/foreman must be equipped with a cell phone at no cost to the Town.

EXHIBIT B
TO
INVITATION FOR BID NO. DS 2011-02

[Price Sheet]

See following page.

PRICE SHEET
WASH AND DAM MAINTENANCE
DS 2011-02

Item No.	Description	Est. Qty.	Unit	Unit Price/Crew Per Day	Extended Price
1.	Wash and Dam Maintenance (8 workers, 1 chipper, 1 truck, 6 chain saws, assorted hand tools). See Exhibit A for more specifics on equipment.	80	Days	$1268.00	$101,454.00
	Subtotal				$101,454.00
	Taxes				$101,454.00
	TOTAL				$101,454.00

EXHIBIT C
TO
INVITATION FOR BID NO. DS 2011-02

[Subcontractor Listing]

See following page.

SUBCONTRACTOR LISTING
WASH AND DAM MAINTENANCE
DS 2011-02

Provide the following information in a separate, sealed envelope, clearly marked "Subcontractors Listing." Failure on the part of the Bidder to complete or improperly complete this form will constitute sufficient cause for rejection.

List only a single name for each category. Subcontractors listed herein shall be utilized on this Project.

Category	Subcontractor
	N/A

EXHIBIT D
TO
INVITATION FOR BID NO. DS 2011-02

[Bid Bond]

See following page.

BID BOND
WASH AND DAM MAINTENANCE
DS 2011-02

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, Artistic Land Management, Inc (hereinafter called Principal), as Principal, and Merchants Bonding Company (Mutual), a corporation organized and existing under the laws of the State of Iowa with its principal office in the City of Des Moines, (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Fountain Hills, (hereinafter called the Obligee) in the penal sum of Ten Percent (10%) of Bid Amount, ---------- (Dollars) ($ 10% of Bid Amount) lawful money of the United States of America, to be paid to the order of the Town of Fountain Hills, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents and in conformance with A.R.S. Section 34-201.

WHEREAS, the Principal has submitted a bid/proposal for: Wash and Dam Maintenance

NOW, THEREFORE, if the Obligee accepts the proposal of the Principal and the Principal enters into a Contract with the Obligee in accordance with the terms of the proposal and gives the Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient surety for the faithful performance of the Contract and for the prompt payment of labor and materials furnished in the prosecution of the Contract, or in the event of the failure of the Principal to enter into the Contract and give the Bonds and Certificates of Insurance, if the Principal pays to the Obligee the difference not to exceed the penalty of the Bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this 28th day of September 2011.

Artistic Land Management, Inc
Principal Seal

BY: _____

Merchants Bonding Company (Mutual)
Surety Seal

BY: _____
Cindy K. Mullooly, Attorney-in-Fact
Construction Risk Partners, Inc.
4500 S Lakeshore Dr, Ste 575, Tempe, AZ 85282
Agency of Record

1572798.2

MERCHANTS BONDING COMPANY
POWER OF ATTORNEY

Know All Persons By These Presents, that the MERCHANTS BONDING COMPANY (MUTUAL), a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

Ted H. Rarrick, Cindy K. Mullooly

of Tempe and State of Arizona its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

TEN MILLION ($10,000,000.00) DOLLARS

and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following Amended Substituted and Restated By-Laws adopted by the Board of Directors of the MERCHANTS BONDING COMPANY (MUTUAL) on November 16, 2002.

ARTICLE II, SECTION 8 - The Chairman of the Board or President or any Vice President or Secretary shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

ARTICLE II, SECTION 9 - The signature of any authorized officer and the Seal of the Company may be affixed by facsimile to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed.

In Witness Whereof, MERCHANTS BONDING COMPANY (MUTUAL) has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 24th day of March , 2011 .

MERCHANTS BONDING COMPANY INCORPORATED -o- 1933 MERCHANTS BONDING COMPANY (MUTUAL)

MERCHANTS BONDING COMPANY (MUTUAL)

By Larry Taylor
President

STATE OF IOWA
COUNTY OF POLK ss

On this 24thday of March , 2011 , before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL), the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.

NOTARIAL SEAL IOWA
CINDY SMYTH
Commission Number 173504
My Commission Expires
March 16, 2012

Cindy Smyth
Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL), do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said MERCHANTS BONDING COMPANY (MUTUAL), which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Company on this 28th day of September , 2011 .

MERCHANTS BONDING COMPANY INCORPORATED -o- 1933 MERCHANTS BONDING COMPANY (MUTUAL)

William Warner Jr.
Secretary

POA 0001 (1/09)

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DUPLICATE

Phoenix, Arizona

AMENDED CERTIFICATE OF AUTHORITY

IT IS HEREBY CERTIFIED, That

MERCHANTS BONDING COMPANY (MUTUAL)
Des Moines, Iowa

is hereby authorized, subject to the provisions thereof and the Charter Powers of said Company, to transact the following kinds of insurance, to-wit:

CASUALTY, SURETY
(excluding workers' compensation)

within the State of Arizona until terminated at the request of the insurer or suspended or revoked by the Director of Insurance.

Arizona Revised Statute 20-217 (C) states:

> A Certificate of Authority remains the property of this state. Upon termination at the request of the insurer or revocation by the Director, the insurer shall immediately deliver the Certificate of Authority to the Director.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Director of Insurance at the City of Phoenix. The effective date of this Certificate of Authority is

February 7 1985.

NAIC
14494

S. David Childers
Director of Insurance

E-146 3/80

268680

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

THIS IS TO CERTIFY, THAT THIS INSTRUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE WITH THE DEPARTMENT OF INSURANCE OF THE STATE OF ARIZONA AND CONSISTS OF 1 PAGE(S)

HEREUNTO SET MY HAND AND THE OFFICIAL SEAL OF THIS DEPARTMENT

FOR THE DIRECTOR OF INSURANCE THIS 11 DECEMBER 2009.

AUTHORIZED REPRESENTATIVE

CERTIFICATE NO.: 268680

EXHIBIT E
TO
INVITATION FOR BID NO. DS 2011-02

[Licenses; DBE/WBE Status]

See following page.

LICENSES; DBE/WBE STATUS
WASH AND DAM MAINTENANCE
DS 2011-02

1. Attach a copy of your Contractor's License to your bid submittal.

2. Attach a copy of your Business Licenses to your bid submittal.

   * Business License must be a Town of Fountain Hills Privilege Tax Business License and an Arizona Transaction Tax (sales) Privilege Tax License

3. Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise?

   Yes_____, No ✓ _____.

   If yes, please provide details and documentation of the certification.

EXHIBIT F
TO
INVITATION FOR BID NO. DS 2011-02

[References]

See following page.

LICENSE EFFECTIVE THROUGH:
STATE OF ARIZONA JUN 2011
Registrar of Contractors CERTIFIES THAT

ARTISTIC LAND MANAGEMENT INC

CONTRACTORS LICENSE NO. ROC208414 CLASS C-21
LANDSCAPING AND IRRIGATION SYS
TEMS
RESIDENTIAL ONLY

THIS CARD MUST BE PRESENTED UPON DEMAND

William A. Mundell
DIRECTOR, ARIZONA REGISTRAR OF CONTRACTORS

LICENSE EFFECTIVE THROUGH:
STATE OF ARIZONA FEB 2012
Registrar of Contractors CERTIFIES THAT
ARTISTIC LAND MANAGEMENT INC

CONTRACTORS LICENSE NO. ROC172763 CLASS A-21
LANDSCAPING AND IRRIGATION SYS
TEMS
COMMERCIAL ONLY

THIS CARD MUST BE PRESENTED UPON DEMAND

William A. Mundell
DIRECTOR

Janet Napolitano
Governor

STATE OF ARIZONA
Office Of Pest Management

Ellis M. Jones
Executive Director

9535 E. Doubletree Ranch Road Scottsdale, Arizona 85258-5514
(602)255-3664 Phone; (602) 255-1281 fax
http://www.sb.state.az.us

BUSINESS LICENSE **Non-Transferable**

ARTISTIC LAND MANAGEMENT, INC.

Business License number: 8313

Has been licensed since 05/14/2004, and is authorized to provide pest management services in Arizona for the year 2009, as long as the business has a current and "valid" Active or Temporary Qualifying Party Licensee and the required financial responsibility, according to the Structural Pest Control Commission's laws and rules.

This license must be renewed by December 1st of each year, and expires on December 31st of each year. For any inquiries regarding this license please visit the Office Of Pest Management's website at www.sb.state.az.us or contact the Office Of Pest Management.

Printed: 12/19/2008

© Copyright 2007 Office Of Pest Management. All Rights Reserved.

Printed By: HELEN

POST IN A CONSPICUOUS PLACE

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

License Number
2978

BUSINESS LICENSE
THIS LICENSE EXPIRES 08/31/2011

Account Number: 576

Business Name: ARTISTIC LAND MANAGEMENT, INC.
Mailing Address: P.O. BOX 2320
CHANDLER AZ 85244-2320

Physical Address: 506 E BOSTON CIRCLE
CHANDLER AZ 85225

Nature of Business: LANDSCAPING INSTALLATION, MAINTENANCE & SERVICES

Date Issued: August 23, 2010

Beverly J Bender
Town Clerk

Total Paid: 50.00

EXHIBIT F
TO
INVITATION FOR BID NO. DS 2011-02

[References]

See following page.

REFERENCES
WASH AND DAM MAINTENANCE
DS 2011-02

Provide the following information for three (3) clients for whom Bidder has provided services of **similar size and scope** with the past (36) months. ***These references will be checked,*** so make sure all information is accurate and current. Failure to provide three (3) accurate or suitable references will result in disqualification.

1. Client: ASU POLYTECHNIC CAMPUS
   Address: 6027 S. SAGEWOOD
   City/State/Zip Code: MESA, AZ
   Contact: KEVIN SHAFER
   Telephone Number: 480.727.1110
   Date of Contract Initiation: 1997- CURRENT
   Project Description: (Include Final Costs) LANDSCAPE MAINTENANCE & INSTALLATION THROUGHOUT CAMPUS. APPROX. $ 300,000.00 YEARLY

2. Client: City of SCOTTSDALE
   Address: 7447 E. INDIAN SCHOOL RD
   City/State/Zip Code: SCOTTSDALE, AZ 85251
   Contact: JODY PIERCE
   Telephone Number: 480.312.5648
   Date of Contract Initiation: 2004 - CURRENT
   Project Description: (Include Final Costs) LANDSCAPE MAINTENANCE THROUGHOUT CITY STREETS AND RIGHTS OF WAYS. Approx. $ 57,000.00 YEARLY.

3. Client: City of CHANDLER
   Address: PO BOX 4009 MS 909
   City/State/Zip Code: CHANDLER, AZ 85244
   Contact: BARTON A BROWN
   Telephone Number: 480.782.3428
   Date of Contract Initiation: 2004 - CURRENT
   Project Description: (Include Final Costs) LANDSCAPE MAINTENANCE TO COVER 9 MILLION SQ/FT OF GRANITE AND TURF THROUGHOUT THE CITY. APPROX. $ 780,000.00 YEARLY.

EXHIBIT G
TO
INVITATION FOR BID NO. DS 2011-02

[Federal Requirements]

See following pages.

Not applicable to this Project.

EXHIBIT G
TO
INVITATION FOR BID NO. DS 2011-02

[Federal Requirements]

See following pages.

Not applicable to this Project.

N/A

EXHIBIT H
TO
INVITATION FOR BID NO. DS 2011-02

[Acknowledgments of Addenda received]

See following pages.

N/A

*All Addenda, if any, together with original, signed acknowledgments, issued for this IFB are to be attached by Bidder as this Exhibit H and submitted with the sealed Bid.

Town of Fountain Hills
Bid Minutes

Project Name:	Wash and Dam Maintenance
Date/Time:	9/28/2011 / 2 pm
IFB Solicitation No.	~~DS 2001-02~~ DS 2011-02

No.	Name of Company	Amount
1.	Artistic Land Mgmt	$1,268.00 per day
2.	R.E. Monks	$1,850.22 per day
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Paul Mood, Director of Development Services