C 2012-142

# PROFESSIONAL SERVICES AGREEMENT
# BETWEEN
# THE TOWN OF FOUNTAIN HILLS
# AND
# RICKER, ATKINSON, MCBEE, MORMAN & ASSOCIATES, INC.

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of May 9, 2012, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Ricker, Atkinson, McBee, Morman & Associates, Inc., an Arizona corporation (the "Consultant").

## RECITALS

A. The Consultant possesses the specific skill and experience required to provide the Town with geotechnical engineering services to determine existing site conditions at three arterial street locations within the Town for the purpose of proposed pavement rehabilitation/reconstruction (the "Services").

B. Pursuant to Section 3-3-10 of the Town Code, the Town may directly select consultants for professional and technical services.

C. The Town desires to enter into an agreement with the Consultant for the Services according to the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which 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 June 30, 2012 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement.

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

3. Compensation. The Town shall pay Consultant an amount not to exceed $19,850.00 for the Services at the rate as set forth in the Scope of Work, attached hereto as Exhibit A.

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. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Documents. All documents 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 completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. 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 of 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 to the highest professional standards in the field.

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, 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 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 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. 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.

G. 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.

H. 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 Section 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.

I. 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. In the event any insurance policy required by this Agreement 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 Consultant's work or services and as evidenced by annual certificates of insurance. 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 this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without the reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing 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 as respects performance of the 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) 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.

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 adjunct or residual 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 $1,000,000 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 Consultant 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.

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. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement'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 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 the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the 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 or 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 the 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. 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 of its agreed Scope of Work as set forth in Section 2 above. 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 the 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, the 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 the Agreement which may remain in effect without the invalid provision or application.

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

13.8 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 the 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.

13.9 Assignment. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Consultant shall be made 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.

13.10 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.

13.11 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.

13.12 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.

13.13 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.

13.14 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.

13.15 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, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

| | |
|---|---|
| If to the Town: | Town of Fountain Hills<br>16705 East Avenue of the Fountains<br>Fountain Hills, Arizona 85323<br>Facsimile: (480) 837-3145<br>Attn: Kenneth W. Buchanan, Town Manager |
| With copy to: | GUST ROSENFELD, P.L.C.<br>One East Washington Street, Suite 1600<br>Phoenix, Arizona 85004-2553<br>Facsimile: (602) 254-4878<br>Attn: Andrew J. McGuire, Esq. |
| If to Consultant: | Ricker, Atkinson, McBee, Morman & Associates, Inc.<br>2105 South Hardy Drive, Suite 13<br>Tempe, Arizona 85282-1924<br>Facsimile: (480) 921-4081<br>Attn: Ken Ricker |

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, (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, or (D) 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.

13.16 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.

13.17 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.18 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 13.18 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.

13.18 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 subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

13.19 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant 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 Consultant submitted a false certification, the Town may impose remedies as provided by law including terminating this Agreement pursuant to subsection 12.2 above.

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

13.21 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

Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on May 17, 2012, by Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town.

JANICE E. BAXTER
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Exp.: December 5, 2012
[affix notary seal here]

Notary Public in and for the State of Arizona

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"**Consultant**"

RICKER, ATKINSON, MCBEE, MORMAN & ASSOCIATES, INC., an Arizona corporation

By: _____

Name: KENNETH R. RICKER

Title: PRESIDENT

(ACKNOWLEDGMENT)

STATE OF ARIZONA )
) ss.
COUNTY OF Maricopa )

This instrument was acknowledged before me on May 17, 2012, by KEN RICKER, as PRESIDENT of RICKER, ATKINSON, MCBEE, MORMAN & ASSOCIATES, INC., an Arizona corporation, on behalf of the corporation.

Barbara A. Caldwell
Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
RICKER, ATKINSON, MCBEE, MORMAN & ASSOCIATES, INC.

[Scope of Work]

See following pages.

R·A·M·M

RICKER • ATKINSON • McBEE • MORMAN & ASSOCIATES, INC.
*Geotechnical Engineering • Construction Materials Testing*

RECEIVED APR 19 2012

Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

April 17, 2012

Attention: Randy Harrel, email (rharrel@fh.az.gov)

Re: Proposal for Geotechnical Engineering Services
Pavement Evaluation – Saguaro Boulevard
Shea Boulevard to Fountain Hills Boulevard
Fountain Hills, Arizona

RAMM Proposal No. PG12864

Ricker, Atkinson, McBee, Morman & Associates, Inc. is pleased to submit this proposal to conduct Geotechnical Engineering Services for the above-referenced project.

If this proposal meets with your approval, please sign, date and return one copy of the enclosed Attachment "A", which outlines project description, our scope of services, completion time and fee to perform services.

If there are any questions regarding the proposed scope of work, please call. Thank you for considering our firm for this project.

Respectfully submitted,

RICKER, ATKINSON, MCBEE, MORMAN & ASSOCIATES, INC.

Kenneth L. Ricker, P.E.

/dh

2105 South Hardy Drive, Suite 13, Tempe, AZ 85282-1924 • Telephone (480) 921-8100 • Facsimile (480) 921-4081
www.rammeng.com

***RICKER • ATKINSON • MCBEE • MORMAN & ASSOCIATES, INC.***

ATTACHMENT "A" Proposal for Geotechnical Engineering Services
For: Town of Fountain Hills
RAMM Proposal No. PG12864

PROJECT: Pavement Evaluation – Saguaro Boulevard
Shea Boulevard to Fountain Hills Boulevard
Fountain Hills, Arizona

DESCRIPTION:

The proposed evaluation project is about 3.75 miles long of relatively old road which has been maintained, sealed and repaired over the years.

SCOPE OF SERVICES:

1. A review of available reports and projects along the road at the Town. A visual review of the road will be accomplished along with a photographic record of the observations.

2. Based on (1.) above, test borings will be performed to determine subsurface conditions and obtain representative samples for laboratory analyses. Twenty five to thirty-five test borings 3 feet in depth (660 feet to 1320 feet intervals) are proposed depending on the condition of the road. Test borings will be Blue Staked. A permit will be obtained from the Town and barricading provided during the field exploration. All test boring will be backfilled and the pavement patch upon completion.

3. Laboratory analyses of representative samples will include:

   Moisture Content and Dry Density
   Swell
   Minus No. 200 Sieve and Plasticity Index
   Standard Proctor

3. The field and laboratory data will be used in engineering evaluation and analyses to formulate our geotechnical recommendations.

4. An Engineer's report will be provided presenting the results of the field review; test borings and laboratory testing, and recommendations for remediation of existing pavements where required including replacement, repairs, overlays and surface treatments based on existing conditions and future use.

*RICKER • ATKINSON • MCBEE, MORMAN & ASSOCIATES, INC.*

ATTACHMENT "A" Proposal for Geotechnical Engineering Services
For: Town of Fountain Hills
RAMM Proposal No. PG12864

PROJECT: Pavement Evaluation – Saguaro Boulevard
Shea Boulevard to Fountain Hills Boulevard
Fountain Hills, Arizona

COMPLETION TIME:

Final report approximately 3 weeks after authorized to proceed.

FEE: $ 9,500.00 to 11,250.00

The undersigned agrees to the forgoing Scope and Fee.

RICKER • ATKINSON • McBEE • MORMAN & ASSOCIATES, INC.

By: _____
Kenneth L. Ricker, P.E., Project Engineer

Client: _____

By: _____

Date: _____

RECEIVED APR 19 2012

***RICKER • ATKINSON • MCBEE • MORMAN & ASSOCIATES, INC.***

ATTACHMENT "A" Proposal for Geotechnical Engineering Services
For: Town of Fountain Hills
RAMM Proposal No. PG12864

PROJECT: Pavement Evaluation – Saguaro Boulevard
Shea Boulevard to Fountain Hills Boulevard
Fountain Hills, Arizona

DESCRIPTION:

The proposed evaluation project is about 3.75 miles long of relatively old road which has been maintained, sealed and repaired over the years.

SCOPE OF SERVICES:

1. A review of available reports and projects along the road at the Town. A visual review of the road will be accomplished along with a photographic record of the observations.

2. Based on (1.) above, test borings will be performed to determine subsurface conditions and obtain representative samples for laboratory analyses. Twenty five to thirty-five test borings 3 feet in depth (660 feet to 1320 feet intervals) are proposed depending on the condition of the road. Test borings will be Blue Staked. A permit will be obtained from the Town and barricading provided during the field exploration. All test boring will be backfilled and the pavement patch upon completion.

3. Laboratory analyses of representative samples will include:

   Moisture Content and Dry Density
   Swell
   Minus No. 200 Sieve and Plasticity Index
   Standard Proctor

3. The field and laboratory data will be used in engineering evaluation and analyses to formulate our geotechnical recommendations.

4. An Engineer's report will be provided presenting the results of the field review; test borings and laboratory testing, and recommendations for remediation of existing pavements where required including replacement, repairs, overlays and surface treatments based on existing conditions and future use.

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For: Town of Fountain Hills
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Shea Boulevard to Fountain Hills Boulevard
Fountain Hills, Arizona

COMPLETION TIME:

Final report approximately 3 weeks after authorized to proceed.

FEE: $ 9,500.00 to 11,250.00

The undersigned agrees to the forgoing Scope and Fee.

RICKER • ATKINSON • McBEE • MORMAN & ASSOCIATES, INC.

By: _____
Kenneth L. Ricker, P.E., Project Engineer

Client: _____

By: _____

Date: _____

R·A·M·M

RICKER • ATKINSON • McBEE • MORMAN & ASSOCIATES, INC.
*Geotechnical Engineering • Construction Materials Testing*

Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

April 20, 2012

Attention: Randy Harrel, email (rharrel@fh.az.gov)

Re: Proposal for Geotechnical Engineering Services — RAMM Proposal No. PG12864A
Pavement Evaluation – Palisades Boulevard
Saguaro Boulevard to Fountain Hills Boulevard and Fountain Hills Boulevard
from Palisades Boulevard to Fountain Hills Middle School
Fountain Hills, Arizona

Ricker, Atkinson, McBee, Morman & Associates, Inc. is pleased to submit this proposal to conduct Geotechnical Engineering Services for the above-referenced project.

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If there are any questions regarding the proposed scope of work, please call. Thank you for considering our firm for this project.

Respectfully submitted,

RICKER, ATKINSON, MCBEE, MORMAN & ASSOCIATES, INC.

Kenneth L. Ricker, P.E.

/dh

2105 South Hardy Drive, Suite 13, Tempe, AZ 85282-1924 • Telephone (480) 921-8100 • Facsimile (480) 921-4081
www.rammeng.com

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For: Town of Fountain Hills
RAMM Proposal No. PG12864A

PROJECT: Pavement Evaluation – Palisades Boulevard
Saguaro Boulevard to Fountain Hills Boulevard and Fountain Hills Boulevard
from Palisades Boulevard to Fountain Hills Middle School
Fountain Hills, Arizona

DESCRIPTION:

The proposed evaluation project is about 2.2 miles long of relatively old road which has been maintained, sealed and repaired over the years.

SCOPE OF SERVICES:

1. A review of available reports and projects along the road at the Town. A visual review of the road will be accomplished along with a photographic record of the observations.

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FEE: $ 5,700.00 to $8,600.00
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RICKER • ATKINSON • McBEE • MORMAN & ASSOCIATES, INC.

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Kenneth L. Ricker, P.E., Project Engineer

Client: _____

By: _____

Date: _____

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*Geotechnical Engineering • Construction Materials Testing*

R·A·M·M

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16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

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RAMM Proposal No. PG12864

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