

**SECOND AMENDMENT
TO
CONTRACT NO. C2014-143
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
LOW MOUNTAIN CONSTRUCTION, INC.**

THIS SECOND AMENDMENT TO CONTRACT NO. C2014-143 (this "Second Amendment") is entered into as of September 25, 2014, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Low Mountain Construction, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. The Town issued Invitation for Bids DS2014-106 (the "IFB") seeking bids from contractors to perform median improvements on Avenue of the Fountains (the "Services"). The Contractor responded to the IFB, and the Town and Contractor entered into Contract No. C2014-143 dated April 3, 2014, as amended by that certain First Amendment, dated June 16, 2014, for the provision of the Services (collectively, the "Contract"), a true and correct copy of which is on file in the Town Clerk's Office. All of the capitalized terms not otherwise defined in this Second Amendment have the same respective meanings as contained in the Contract.

B. The Town has determined that additional Services by the Contractor are necessary in connection with the Contract (the "Additional Services").

C. The Town and the Contractor desire to enter into this Second Amendment to (i) modify the scope of work to include the Additional Services and (ii) increase the compensation to the Contractor for the Additional Services.

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 Contractor hereby agree as follows:

1. Scope of Work. Contractor shall provide the Additional Services as set forth in the Additional Scope of Work, attached hereto as Exhibit 1 and incorporated herein by reference.

2. Compensation. The Town shall increase the compensation to Contractor by \$17,602.38 for the Additional Services at the rates set forth in the Additional Fee Proposal, attached hereto as part of Exhibit 1, resulting in an increase of the total compensation, from \$1,531,311.45 to an aggregate amount not to exceed \$1,548,913.83.

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

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

5. Conflict of Interest. This Second Amendment and the Contract may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

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

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

Ken Buchanan
Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On Oct. 9, 2014, before me personally appeared Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

Heather Ware
Notary Public



EXHIBIT 1
TO
SECOND AMENDMENT
TO
CONTRACT NO. C2014-143
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
LOW MOUNTAIN CONSTRUCTION, INC.

[Additional Scope of Work]

See following pages.

Request For Information

RFI No.: Four (4)

Date: 21-May-14

Project: AVENUE OF THE FOUNTAINS
E8504

Architect: Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive, #3
Tempe, Arizona 85282

Fax: (480) 966-2874
Phone: (480) 719-9003
Email: wadef@cox.net

Please Respond To: Wayne Hatch - whatch@lowmountain.com

Response Needed By: ASAP

Drawing/Detail: Existing Sub Panels

Question:

On sub panel "A " just south of 16712 avenue the Fountain we have a concern. At that panel we have currently 1- 2 1/2" feeder pipe that will remain. The panel also has 6- 1 1/2" pipes and 4- 1" pipes. The bottom of the panel is very full now. As per the plan we are to leave the existing 2 1/2" in place and install 2 - 2 1/2", 3 - 1 1/2", and 9 - 1" pipes. There is not enough room in the bottom of the panel for all of the pipes.
Another concern that we have is the existing pipe is in cased in concrete. Panel A is not the only panel that has concrete around it and this will be an issue at all location where we need to tie into the existing pipes or panel. Please provide us with some direction on how you want us to proceed and handle these conditions.

Response: Cliff Tolman

Date: 6-5-2014

Sweep the existing conduits into a new #7 pull box next to the panel. Then sweep the conduits as shown on the plans out of that pull box. The proposed wire will fit in the existing conduits to the new pull box, see wire and conduit note 104 attached to this document. The 2.5" conduit that is the incoming power feed should be left unaltered.

TO ACCOMPANY RFI #4

WIRE & CONDUIT TABLE

CONDUIT		WIRE		REMARKS
NO.	SIZE	POWER	GROUND	(CKT #)
104	EX 1.5"	3-#2	1-#2	A(1,3)
		2-#12		A-4
		2-#12		A-6
	EX 1.5"	3-#2	1-#2	A(9,11)
		4-#8		A(37,39,41)
		2-#10		A-38
		2-#10		A-2
	EX 1.5"	3-#1/0	1-#1/0	A(5,7)
		2-#10		A-34
	EX 1.5"	3-#3/0	1-#3/0	A(13,15)
	EX 1.5"	2-#10	1-#10	A-30
		2-#12		A-32
		2-#12		A-36
		2-#12		A(8,10)
	EX 1.5"	PULL ROPE		SPARE
	EX 1"	2-#12	1-#12	A-12
		2-#12		A-40
	EX 1"	PULL ROPE		SPARE
EX 1"	PULL ROPE		SPARE	
EX 1"	PULL ROPE		SPARE	



14090 / 3.2

Request For Information

RFI No.: Six (6)

Date: 05-Jun-14

Project: AVENUE OF THE FOUNTAINS
E8504

Architect: Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive, #3
Tempe, Arizona 85282

Fax: (480) 966-2874
Phone: (480) 719-9003
Email: wadef@cox.net

Please Respond To: Wayne Hatch - whatch@lowmountain.com

Response Needed By: ASAP

Drawing/Detail: Sheets SE-8, SE-9, & SE-10 Detail B (Bid Alternate Package "C")

Question:

In the attached detail it calls out to connect to wiring and lighting provide in shade structure. The shade structures do not come with lighting and wiring and there are not fixtures called out for those structures. Is the intent to just run the wire in the poles for future use or was there suppose to be specified fixtures? If it is to have fixtures on them now we need a fixture specified and a detail showing the mounting and placing.

Response:

A handwritten signature in black ink, appearing to be "Wade Felkins", written over a light blue horizontal line.

Date:

6/9/14

Canopy light fixtures were not included in the base bid. We did want to provide electrical service to the canopies for possible future installation.



July 14, 2014

Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive
Suite 3
Tempe, Arizona 85282

RE: Avenue Of The Fountains Project
Fountain Hills, Arizona

Dear Wade,

Please accept the following pricing proposal to provide the eight (8) new lights in the shade canopies. We are providing the Vista Pro 1079-DZ-W-WF-M that we were directed to price in our monthly meeting. Our pricing is as follows:

Continental Lighting	\$ 3,868.00
Insurance & Bond (3%)	116.00
Fee (10%)	398.00
Tax (5.785%)	254.00

Total	\$ 4,636.00

Please review this price proposal and let us know how you would like us to proceed. Please contact me if you have any questions or concerns.

Sincerely,
LOW MOUNTAIN CONSTRUCTION, INC.

A handwritten signature in cursive script that reads "Wayne Hatch".

Wayne Hatch
Vice President



CHANGE ORDER #03

SUBMITTED TO: Low Mountain Construction, Inc.

ADDRESS: 4105 N. 20th Street, Ste. 205

CITY: Phoenix

STATE: AZ

ZIP CODE: 85016

PROJECT NAME: Avenue of the Fountains Median Improvements

JOB NO.: 1895N

DATE: July 8, 2014

<u>Description</u>	<u>Qty./Hrs.</u>	<u>Unit Price</u>	<u>Total</u>
Furnish and install shade structure fixtures, as requested.			
<u>Materials:</u>			
Vista Pro 1079-DZ-W-WF-M8 EA.		\$ 275.00	\$ 2,200.00
J - Boxes	8 EA.	\$ 98.15	\$ 785.20
Subtotal -			\$ 2,985.20
Add Overhead / Margin (15%) -			\$ 447.78
Total for Materials -			\$ 3,432.98
<u>Labor:</u>			
Foreman	8 Hrs.	\$ 55.96	\$ 447.68
Laborer	8 Hrs.	\$ 38.14	\$ 305.12
Subtotal -			\$ 752.80
Labor Burden (50%) -			\$ 376.40
Total for Labor -			\$ 1,129.20
<u>Equipment:</u>			
Service Truck	8 Hrs.	\$ 25.77	\$ 206.16
Total for Equipment -			\$ 206.16
CHANGE ORDER TOTAL -			\$ 4,768.34

Approved By: _____

Date: _____



August 27, 2014

Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive
Suite 3
Tempe, Arizona 85282

RE: Avenue Of The Fountains Project
Fountain Hills, Arizona

Dear Wade,

Please accept the following pricing proposal to clear coat the shade structure steel. Our pricing is as follows:

JPS Painting (\$450ea)	\$ 3,600.00
Insurance & Bond (3%)	108.00
Fee (10%)	371.00
Tax (5.785%)	236.00

Total	\$ 4,315.00

Please review this price proposal and let us know how you would like us to proceed. Please contact me if you have any questions or concerns.

Sincerely,
LOW MOUNTAIN CONSTRUCTION, INC.

Wayne Hatch
Vice President



September 5, 2014

Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive
Suite 3
Tempe, Arizona 85282

RE: Avenue Of The Fountains Project
Fountain Hills, Arizona

Dear Wade,

Please accept the following pricing proposal to remove the blown over olive tree from the site. Our price is as follows:

32 Man Hours @ \$35/hr	\$ 1,120.00
Chainsaw & Equipment	175.00
Dumpster & Hauloff	475.00
Insurance & Bond (3%)	53.00
Fee (10%)	182.00
Tax (5.785%)	116.00

Total	\$ 2,121.00

Please review this price proposal and let us know how you would like us to proceed. Please contact me if you have any questions or concerns.

Sincerely,
LOW MOUNTAIN CONSTRUCTION, INC.

A handwritten signature in black ink, appearing to read "Wayne Hatch", written in a cursive style.

Wayne Hatch
Vice President



September 11, 2014

Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive
Suite 3
Tempe, Arizona 85282

RE: Avenue Of The Fountains Project
Fountain Hills, Arizona

Dear Wade,

Please accept the following pricing proposal for the one (1) additional 48" Olive Tree to replace the tree that was blown down in the storm. This price reflects the price found in line item #9 of the unit price contract. Our pricing is as follows:

One 48" Box Tree (Olive) \$ 1,545.38

Please review this price proposal and let us know how you would like us to proceed. Please contact me if you have any questions or concerns.

Sincerely,
LOW MOUNTAIN CONSTRUCTION, INC.

A handwritten signature in black ink that reads "Wayne Hatch".

Wayne Hatch
Vice President



September 16, 2014

Mr. Wade Felkins
LANDMARK DESIGN
2318 South McClintock Drive
Suite 3
Tempe, Arizona 85282

RE: Avenue Of The Fountains Project
Fountain Hills, Arizona

Dear Wade,

Please accept the following pricing proposal to move the fence into the median for the Arts Festival and then to move it back into the street at the end of the Festival. Our pricing is as follows for the moving the fence twice:

Foreman	\$ 624.00
Laborers (3 for 2 days)	375.00

Total	\$ 999.00

Please review this price proposal and let us know how you would like us to proceed. Please contact me if you have any questions or concerns.

Sincerely,
LOW MOUNTAIN CONSTRUCTION, INC.

A handwritten signature in black ink that reads "Wayne Hatch".

Wayne Hatch
Vice President