

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
POWER TECH CONTRACTING LLC**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of June 19, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Power Tech Contracting LLC an Arizona limited liability company (the "Consultant").

RECITALS

A. The Town issued a Request for Proposal, PW 2018-001(the "RFP"), a copy of which is on file in the Town Clerk's office and incorporated herein by this reference, seeking proposals from vendors for traffic signal maintenance and emergency call-out services as set forth in Section 2.

B. The Consultant responded to the RFP by submitting the Proposal, attached hereto as Exhibit "A" and incorporated herein by this reference.

C. The Town desires to enter into an Agreement with the Consultant to perform the traffic signal maintenance and emergency call-out services, as set forth in Section 2 below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2019. This Agreement may be extended in one-year increments for a maximum of four additional terms, upon the mutual agreement of the parties in writing. The Agreement may be terminated prior to its termination date as otherwise provided in this Agreement

2. Scope of Work. The Consultant shall provide the traffic signal maintenance and emergency call-out services ("Services") described and set forth in the Scope of Work attached as Exhibit "B", subject to the terms of this Agreement.

3. Compensation. The Town shall pay Consultant an amount not to exceed \$45,100.00 per year for the Services, and not to exceed a maximum of \$225,500.00 including all renewals.

4. Payments. The Town shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. The contract number must be referenced on all invoices.

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

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

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

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

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

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify 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") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor in connection with Consultant's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

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

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Consultant. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

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

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

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

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

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant

shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

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

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this 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.

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

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

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

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

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

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

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

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

#### 11.2 Required Insurance Coverage.

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

B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this

Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

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

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

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

## 12. Termination: Cancellation.

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

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

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

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

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

12.6 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Consultant informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Consultant hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

### 13. Miscellaneous.

13.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The 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, without regard to conflict of law principles, and any lawsuit pertaining to this Agreement shall be brought only in the Superior Court of Maricopa County, Arizona, which shall have exclusive jurisdiction over any such lawsuit.

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

13.6 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

13.7 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the Town in the Town's sole and absolute discretion, 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.

13.8 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 in the Town's sole and absolute discretion. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

13.9 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.

13.10 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.

13.11 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.

13.12 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, Taxes, or Liens. 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, and for any liens filed against the Town and paid for by the Town.

13.13 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Grady E. Miller, Town Manager

With copy to: Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Town Attorney

If to Consultant: Power Tech Contracting LLC  
25008 S 180th St  
Gilbert, AZ 85298  
Attn: Matthew Allen

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

13.14 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.

13.15 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.16 below, Consultant's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any 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 13.16 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.

13.16 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.

13.17 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

13.18 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.

13.19 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.

13.20 Public Records. Consultant acknowledges that the Town is a public entity, subject to Arizona's public records law (A.R.S. § 39-121 *et seq.*) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request, subpoena, or other judicial process.

13.20.01 Trade Secrets Statement. If Consultant believes documents related to its work pursuant to the Agreement contain trade secrets or other proprietary data, Consultant must provide notice to the Town at the time the documents are provided to the Town, and include with the notification a statement that explains and supports Consultant's claim. Consultant also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.

13.20.01 Notice of Records Request. In the event the Town determines it is legally required to disclose any documents subject to a Trade Secrets Statement as defined in section 13.20.01, the Town, to the extent possible in its sole and absolute discretion, will provide Consultant with prompt written notice by fax, email, or certified mail so that Consultant may

seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The written notice will include a time period for Consultant to seek court ordered protection or other legal remedies. If Consultant does not obtain such court ordered protection by the expiration of the time period, the Town may release the documents subject to the Trade Secrets Statement without further notice to Consultant.

[SIGNATURES ON FOLLOWING PAGES]

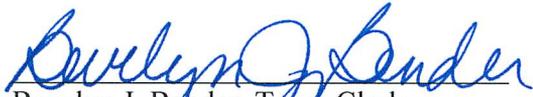
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

  
Grady E. Miller, Town Manager

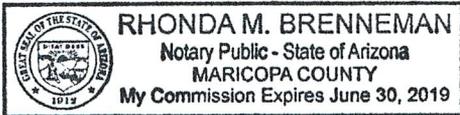
ATTEST:

  
Bevelyn J. Bender, Town Clerk

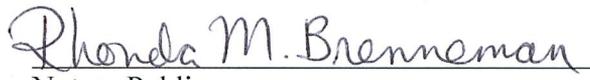
(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On June 21, 2018, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



(Affix notary seal here)

  
Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
POWER TECH CONTRACTING LLC

[Proposal]

See following pages.



May 5<sup>th</sup> 2018

Public Works Department  
Town of Fountain Hills  
16705 E Avenue of the Fountains  
Fountain Hills, AZ 85268  
ATTN: Justin Weldy

RE: Annual Traffic Signal Maintenance & Emergency Call-Out Services PW 2018-001

We are pleased to submit the attached proposal for the Annual Traffic Signal Maintenance and Emergency Call-Out Services PW 2018-001. Power Tech Contracting has vast experience with the Town of Fountain Hills Traffic Signal system. Each of the key members of our team have all spent time working in and with the Town of Fountain Hills on traffic signal projects over the past 2 years.

We pride ourselves on our excellence in traffic signal maintenance and sustainability. Our rapid response and expert knowledge has been proven in the traffic signal industry. Customer service is given the highest priority and our crews are diversified, courteous, and clean cut.

We appreciate the opportunity to participate in this process with the Town of Fountain Hills. We are excited about the experience and qualifications our team members bring, and are confident that we can introduce new technology to the Traffic Signal Program, while creating energy and cost-saving solutions.

Please feel free to contact me anytime at (480) 299 1638 cell or [mallen@PowerTechaz.com](mailto:mallen@PowerTechaz.com) email.

Respectfully,



Matthew Allen  
VP Sustainable Lighting Solutions  
Power Tech Contracting  
25008 S 180<sup>th</sup> St  
Gilbert AZ 85298

## GENERAL INFORMATION

Power Tech Contracting, LLC (PTC) is a locally owned AZ based LLC. Its main offices are located at 1522 S Sierra St Gilbert, AZ 85296 the mailing address is 380 E Ray Rd Gilbert, AZ 85296. Power Tech Contracting's EIN is 46-1025133. It is a Limited Liability Company that is taxed as an S-Corp. The following are members of the LLC, Timothy Conway, Justin Hatch and Matthew Allen. Each are authorized to act on behalf of the company. For questions on anything concerning the Proposal, please contact Matthew Allen (480) 278-0541 or [mallen@powertechaz.com](mailto:mallen@powertechaz.com).

The principal office is located at 1522 S Sierra Street, the mailing address is 380 E Ray Rd Gilbert, AZ 85296. Legal Documents and business records are located at 25008 S 180<sup>th</sup> St Gilbert, AZ 85298.

Power Tech Contracting was formed in 2012 as a Streetlight and Traffic Signal Maintenance company. Tim, Justin and Matt all have years of experience in streetlight and traffic signal maintenance as well as residential construction. Tim and Matt both are IMSA Level II Traffic Signal Tech, Justin is an IMSA Level I Traffic Signal Tech. Additionally Jay Hatch is an IMSA Level II Traffic Signal Tech. We are currently pursuing IMSA Certification for 2 additional techs. Matt, Tim, Justin and Jay are available 24/7 for any signal issues that arise.

Power Tech Contracting has always fully performed within contract specifications, and has worked to resolve any issues that may arise to prevent the loss of a contract. PTC'S leadership and expertise in street light maintenance has always fulfilled any obligations to prevent the loss of a contract. PTC and its principle officers have always performed within contract expectations and specifications, and have professionally worked to resolve any issues that have occurred during contract execution. Our attention to detail helps avoid conflicts and our flexibility allows for prompt resolution should any issues occur. Additionally PTC has vetted the other organizations that have been chosen as partners on this project, each company has a strong history of completing projects and contracts without any adverse actions or contract termination.

Since the formation of Power Tech Contracting there have been no claims from contract litigation or arbitration. There have been no lawsuits or legal action taken Power Tech Contracting, LLC is members or employees.

## EXPERIENCE AND QUALIFICATIONS OF THE VENDOR

Power Tech Contracting, LLC (PTC) is a Phoenix Area prime contractor. PTC was established in 2012 as a streetlight contractor, the PTC team was assembled expressly for these types of projects. Our highly qualified team members bring 100+ years of combined electrical experience, with 45 of those years directly maintaining Traffic Signal systems. The Power Tech team is uniquely positioned to provide an unparalleled level of service, with experience in both maintenance and emergency call-out service areas. Key team members have been an important part of the Town of Fountain Hills Traffic Signal System for the past 2 years.

Power Tech holds multiple contracting licenses including an ROC A 295581 General Engineering license. In addition to the licenses held, our team members are IMSA certified with Work Zone Safety and Roadway Lighting. PTC also has a Certified Journeyman Lineman on staff as well as Journeyman Electricians.

Power Tech Contracting is uniquely qualified for traffic signal maintenance and emergency call-out services. In addition to being the current traffic signal maintenance and on-call contractor for the Town of Fountain Hills, Power Tech Contracting currently holds other contracts for similar sized municipalities in Arizona including: Town of Paradise Valley, The City of Tolleson, The City of Sedona and the Town of Camp Verde. Power Tech's roles with the above listed municipalities are providing Traffic Signal Maintenance and Call-Out Services. Additionally members of our team have been in charge of traffic signal and streetlight maintenance in multiple other cities including the City of Phoenix, City of Flagstaff, City of Goodyear, City of Mesa, and Salt Lake County in Utah. All of these projects have given us diversified experience, qualifications, and a technical background in street light maintenance projects. Every member of this team has multiple years of experience in street light maintenance with the appropriate certifications with a key understanding of the Town of Fountain Hill's needs in traffic signal maintenance and emergency call-out services.

Power Tech Contracting personnel take a proactive approach to maintenance services, by performing monthly maintenance at each intersection it achieves multiple solutions:

1. It reduces liability and protects the Town of Fountain Hills by showing due diligence should records ever be requested in the event of a collision.
2. Monthly maintenance prevents long term neglect, it allows issues to be caught early preventing costly repairs.

All of the Key personnel reside within a 45 min radius of Fountain Hills making emergency response times within an hour of the call in most cases. Power Tech has a proven track record with emergency call-outs, the ability to trouble shoot quickly and make the repairs without cutting corners or skipping steps. Power Tech has a global emergency call out number that will ring all 4 of the key personnel when called. Additionally Power Tech will be deploying the digital log book that will be used by all tech to record any traffic signal activity in the Town of Fountain Hills. This will allow the town personnel to have real time access to records as well as a digital record of what is recorded in the log book at each of the signals.

The final key to a successful traffic signal maintenance and call-out program is providing local resources and support. Power Tech has an excellent working relationship with Econolite, Iteris and Opti-com support and technical

reps and have worked on numerous projects with them.

## REFERENCES

The Town of Paradise Valley  
Brent Skoglund  
6401 East Lincoln Dr.  
Paradise Valley, AZ 85253  
(480) 348-3540  
[bskoglund@paradisevalleyaz.gov](mailto:bskoglund@paradisevalleyaz.gov)  
Traffic Signal Maintenance and Emergency On Call  
7/1/2016 – Present (3 year with 2 optional extensions)

The City of Tolleson  
Mike Marquez  
9061 W Jefferson St  
Tolleson, AZ 85353  
(480)258-1016  
[mmarquez@tollesonaz.org](mailto:mmarquez@tollesonaz.org)  
Traffic Signal Maintenance and Emergency On Call  
1/1/2017 - Present

The Town of Fountain Hills  
Justin Weldy  
16705 E Avenue of the Fountains  
Fountain Hills, AZ 85286  
480-816-5133  
[jweldy@fh.az.gov](mailto:jweldy@fh.az.gov)  
Traffic Signal Maintenance and Emergency On Call  
6/16/2016 – 6/30/2017 (Initial Contract)  
July 1 2017 – Present (Contract Ammendment)

## KEY POSITIONS

### Tim Conway

- 30 years traffic signal / streetlight call-out and maintenance
- IMSA Certified
  - Work Zone Safety
  - Roadway Lighting
  - Traffic Signal Level II
- Light Rail Track Trained
- Journeyman Electrician
- Journeyman Lineman
- Traffic Signal Training Manager
- Managed 3,400 APS street lights for the City of Flagstaff
- Managed 38,700 SRP street lights for the City of Phoenix

Tim started his career in 1983 in Phoenix as a lighting technician and worked his way up to Journeyman Lineman in 1992. He is our leading expert on technical issues, customer coordination, and dispute resolution. Tim has worked for city and county governments for over 13 years and private enterprise for 20 years. He has valuable experience in dealing with municipal requirements and timelines. Tim is naturally proficient in solving problems that arise in the normal course of any work-flow and expedited processing.

### Justin Hatch

- 25 years traffic signal / streetlight call-out and maintenance
- IMSA certified
  - Work Zone Safety
  - Roadway Lighting
  - Traffic Signal Level I
- Manages Traffic Signal Contract Operations
- Managed 8,500 APS street lights for the City of Goodyear
- Managed 52,000 APS street lights for the City of Phoenix
- Maintained/Managed 38,700 SRP street lights for the City of Phoenix

Justin has been in the lighting industry since 1986. He started working on Phoenix Street Light Maintenance in 2009 as a field technician and then supervisor in the SRP service area. He then changed to the APS service area in 2011 as a project manager. He is in charge of safety for PTC and oversees weekly safety meetings and random field checks with the technicians.

**Matthew Allen**

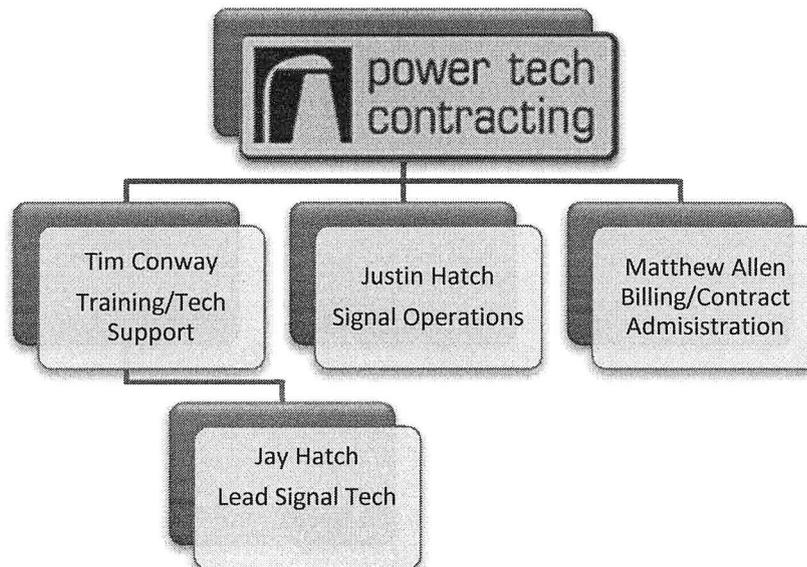
- 10 years traffic signal / streetlight call-out and maintenance
- IMSA certified
  - Work Zone Safety
  - Roadway Lighting
  - Traffic Signal Level II
- Traffic Signal
- Managed the City of Mesa rusted pole replacement
- Maintained 38,700 SRP street lights for the City of Phoenix

Matt got his start in lighting in 1998 working various parking lot lighting projects. In 2008 he began working in lighting maintenance with the City of Phoenix as a technician. Matt has extensive experience dealing with field crews. He works daily with PTC technicians to make sure they have the proper equipment and tools to complete their work in an efficient manner. Matt earned his Bachelor's degree in finance from Arizona State University, and is currently enrolled as an MBA student at Western Governors University. Matt has experience with large contract negotiation as well as supply chain management.

**Jay Hatch**

- 3 years traffic signal / streetlight call-out and maintenance
- IMSA certified
  - Work Zone Safety
  - Traffic Signal Level II
- Traffic Signal Tech, performs municipality monthly PMs

Jay Started in the traffic signal industry in 2015 and has worked closely with seasoned technicians that have mentored him. Jay has become a key member of the signal team as he has developed his ability to troubleshoot and navigate the technical components of the signal systems. Jay has been to numerous trainings and is always looking to expand his knowledge base on the new technologies in the traffic signal industry.



### **Key Personnel Roles in Fountain Hill Maintenance and On-Call**

**Tim Conway:** Tim will be focused on helping to provide continual training for Jay and the other technicians. He is a resource when needed in the field for either maintenance, replacement or callouts.

**Justin Hatch:** His primary role will be operations and scheduling to make sure that each intersection is visited monthly and any additional work is scheduled in a timely manner. He is a resource when needed in the field for either maintenance, replacement or callouts.

**Matthew Allen:** His primary role will be billing and contract administration to make sure that Power Tech is performing in accordance with contract obligations. Matt will also work to make sure that the Technicians are properly logging each visit on the log book application. He is a resource when needed in the field for either maintenance, replacement or callouts.

**Jay Hatch:** His primary role is to perform monthly maintenances on each of the intersections and work with Town Personnel on any other issues that are needed. Jay will be available as a resource to assist with any projects that may arise in the contract duration.

### **PROJECT APPROACH**

PTC's project management approach is focused on maintaining the Town's Traffic Signal System improve the Town's infrastructure as well as move forward with progressive system enhancements, digital log books, night audits, and a portal for reporting issues regarding traffic signals. In addition to its management team, PTC believes that its service personnel should be able to make qualified decisions in the event of an emergency or extenuating circumstances, ensuring that the Town will have full access to competent and qualified experts in any situation. PTC has a minimum of 4 people on staff to answer phones 24/7. In addition, a global emergency number that simultaneously forwards to all of key PTC personnel and our in-house after-hours service representative will be provided to the MCSO and Fountain Hills Fire department, enabling immediate response, shorter turnaround times, better partnership, and higher satisfaction regarding fulfillment of field service and emergency issues.

Any company is only as proficient, transparent, and professional as the people that it employs, and that does not filter down if it does not exist at the top in the form of executive integrity. Regarding the associated subject of dispute resolution, PTC offers honest, concise communications, open-minded understanding, and sustainable flexibility. Disputes generally originate from issues starting at the field level and then gravitate toward the official partnership authorities that can establish a reasonable and final conclusion that will be mutually agreeable. Changes in scope of work are handled through the use of written change order processing, after conferring with all of the appropriate interests and parties. We are as flexible as possible so as to also be financially viable in the future.

PTC holds weekly safety/planning meetings with employees to ensure that every associate has the proper tools, training, knowledge, and attitude toward safety to facilitate professional performance at every level. Town of Fountain Hills representatives are always welcome to attend our meetings.

PTC promises to deliver the highest level of customer service, thru communication, quality workmanship and timely results. Communication: Town personnel have each of the key personnel's contact info including cellphones. PTC feels that a strong partnership is built on a foundation of trust and transparency. PTC has a proven track record with municipalities and consistently goes the extra mile to ensure that all needs are met, large or small. Additionally the flexibility of PTC allows PTC to be adaptive and put the needs of the Town as a priority. Should any issues arise that are a result in lack of quality PTC is committed to resolve any and all issues immediately.

PTC has worked hard over the past 2 years to build a solid maintenance program with the Town of Fountain Hill personnel to make sure that the traffic signal system is well maintained and records are up to date. PTC feels that this approach is effective but is open to new ideas and approaches as the need arises. PTC has knowledge of each of the intersections in the town and is prepared to continue to service the intersections with regularly scheduled maintenances.

PTC is also prepared for any call-outs that may arise including but not limited to Unscheduled or emergency repairs to controller or cabinet. Repair or replace mast arm pole, pedestal pole, or other similar pole knocked down due to unforeseen causes. Perform additional repairs or maintenance requested by the Town, which is reasonably related to the scope of this Agreement. Also includes street light luminaries mounted on traffic signal poles, knockdowns, outages, flash calls and dark intersections. PTC has a cabinet wired and running to insure that if cabinet replacement is necessary PTC can swap out a cabinet quickly to avoid intersection down time.

PTC has maintained the Town Traffic Signal System for the last 2 years and will continue to provide a high level of service by performing month maintenances utilizing a comprehensive check list to ensure that all components and materials are inspected, tested and certified in accordance with the MUTCD.

PTC maintains a fleet of service trucks and equipment that capable of providing rapid response in a safe and professional manner. All trucks are equipped with the necessary safety equipment and testing/troubleshooting equipment to provide on-site repair for dangerous or hazardous situations.

Any replacement parts used shall be used in accordance to town specifications. PTC does not rely on substandard materials as the failure rate and liability do not fit with PTC project approach. Only materials that have been approved by the town personnel/engineers will be utilized.

IV. **VENDOR INFORMATION FORM**

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

Power Tech Contracting, LLC  
 \_\_\_\_\_  
 VENDOR SUBMITTING PROPOSAL

46-1025133  
 \_\_\_\_\_  
 FEDERAL TAX ID NUMBER

Matthew J. Allen  
 \_\_\_\_\_  
 PRINTED NAME AND TITLE

  
 \_\_\_\_\_  
 AUTHORIZED SIGNATURE

380 E Ray Rd  
 \_\_\_\_\_  
 ADDRESS

(480) 278-054                      N/A  
 \_\_\_\_\_  
 TELEPHONE                              FAX #

Gilbert                      AZ                      85296  
 \_\_\_\_\_  
 CITY                              STATE                              ZIP

5/7/2018  
 \_\_\_\_\_  
 DATE

WEB SITE:  
www.powertechaz.com

E-MAIL ADDRESS:  
 mallen@powertechaz.com

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

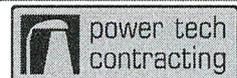
- \_\_\_\_\_ Small Business Enterprise (SBE)
- \_\_\_\_\_ Minority Business Enterprise (MBE)
- \_\_\_\_\_ Disadvantaged Business Enterprise (DBE)
- \_\_\_\_\_ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

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

[Scope of Work for Annual Maintenance and Emergency call-out services]

The vendor agrees to provide annual maintenance and emergency call- out services, for the Town's t r a f f i c control system.



## PRICE SHEET

## REQUEST FOR PROPOSALS

Annual Traffic Signal Maintenance & Emergency Call-Out ServicesPW 2018-001

**NOTE: All pricing blanks must be filled in. Empty or unfilled spaces in the Bid Price Sheet shall result in a determination that a Bid is non-responsive.**

Item No.	Description of Materials and/or Services	Qty	Unit	Unit Price	Total Price
1.	Annual Traffic Signal Maintenance Services: <u>2,925.00</u> per month x 12 months = <u>35,100</u> annually, billed monthly	1	Lump Sum		35,100.00
2.	Traffic Signal (Emergency) Call Out Services to include one (1) technician and one (1) service truck.	1	Hourly	125.00	

**\* ALL PRICES MUST INCLUDE ALL APPLICABLE TAXES.**

PHOENIX 77018-1 446442v1