



NOTICE OF REGULAR MEETING

FOUNTAIN HILLS TOWN COUNCIL

Mayor Ginny Dickey

Vice Mayor Art Tolis

Councilmember Dennis Brown

Councilmember Sherry Leckrone

Councilmember Alan Magazine

Councilmember Mike Scharnow

Councilmember David Spelich

TIME: 5:30 P.M. – REGULAR MEETING

WHEN: TUESDAY, MARCH 19, 2019

**WHERE: FOUNTAIN HILLS COUNCIL CHAMBERS
16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, AZ**

Councilmembers of the Town of Fountain Hills will attend either in person or by telephone conference call; a quorum of the Town's various Commission, Committee or Board members may be in attendance at the Workshop and/or Council meeting.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Town Council are audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.

REQUEST TO COMMENT

The public is welcome to participate in Council meetings.

TO SPEAK TO AN AGENDA ITEM, please complete a *Request to Comment* card, located in the back of the Council Chambers, and hand it to the Town Clerk prior to discussion of that item, if possible. Include the **agenda item** on which you wish to comment. Speakers will be allowed three contiguous minutes to address the Council. Verbal comments should be directed through the Presiding Officer and not to individual Councilmembers.

TO COMMENT ON AN AGENDA ITEM IN WRITING ONLY, please complete a *Request to Comment* card, indicating it is a written comment, and check the box on whether you are **FOR** or **AGAINST** an agenda item, and hand it to the Town Clerk prior to discussion, if possible.

REGULAR MEETING

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE** – Mayor Ginny Dickey
2. **INVOCATION** – Pastor Clayton Wilfer, Joy Fellowship
3. **ROLL CALL** – Mayor Ginny Dickey
4. **REPORTS BY MAYOR, COUNCILMEMBERS AND TOWN MANAGER**
5. **SPECIAL PUBLIC APPEARANCES/PRESENTATIONS**
 - A. Monthly Update by Captain Larry Kratzer of the Maricopa County Sheriff's Office

6. CALL TO THE PUBLIC

Pursuant to A.R.S. 38-431.01(H), public comment is permitted (not required) on matters NOT listed on the agenda. Any such comment (i) must be within the jurisdiction of the Council and (ii) is subject to reasonable time, place, and manner restrictions. The Council will not discuss or take legal action on matters raised during "Call to the Public" unless the matters are properly noticed for discussion and legal action. At the conclusion of the Call to the Public, individual councilmembers may (i) respond to criticism, (ii) ask staff to review a matter, or (iii) ask that the matter be placed on a future Council agenda.

7. CONSENT AGENDA ITEMS

All items listed on the Consent Agenda are considered to be routine, non-controversial matters and will be enacted by one motion and one roll call vote of the Council. All motions and subsequent approvals of consent items will include all recommended staff stipulations unless otherwise stated. There will be no separate discussion of these items unless a councilmember or member of the public so requests. If a councilmember or member of the public wishes to discuss an item on the Consent Agenda, he/she may request so prior to the motion to accept the Consent Agenda or with notification to the Town Manager or Mayor prior to the date of the meeting for which the item was scheduled. The items will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- A. **APPROVAL OF** the minutes of the Special Meeting of March 5, 2019; and the Regular Meeting of March 5, 2019.
- B. **CONSIDERATION OF** approving an Extension of Premises Application submitted by Merita Kraya representing Euro Pizza Cafe located at 12645 North Saguardo Blvd, Fountain Hills, who will be hosting a beer garden in conjunction with Bone Haus Brewery on April 13, 2019.
- C. **CONSIDERATION OF** approval of Final Replat for Lot 4 of Palatial Estates.
- D. **CONSIDERATION OF** adopting Ordinance 19-05 amending Fountain Hills Town Code Article 9-5, Section 9-5-2, Definitions to reflect the recent acquisition of additional Preserve land.
- E. **CONSIDERATION OF** approving a grant application for the Kompan playground matching funds grant for \$50,000.

8. REGULAR AGENDA

- A. **CONSIDERATION OF** adopting Resolution 2019-22 amending the McDowell Mountain Preservation Commission Bylaws.
- B. **CONSIDERATION OF** appointment of additional member to the McDowell Mountain Preservation Commission and possible designation of up to two emeritus members.
- C. **CONSIDERATION OF** approving the Strategic Planning Advisory Commission recommended Reprioritization of the 2017 Strategic Plan.

- D. CONSIDERATION OF approval of Job Order Contracts #2019-006 for trades related to construction and maintenance services, each in an amount up to \$125,000.00, with the following vendors: Utility Construction Company, Inc.; REDHAWK SOLUTIONS, LLC; T&T Construction, Inc.; Carume Contracting Quality Construction, LLC; Johnson Carlier, LLC; GCON, Inc.; CORE Construction, Inc.; Caliente Construction; JP and Sons Contracting, Inc.; Vincon, LLC; LAN-CON, INC.; SWP Contracting and Paving; FCI Constructors, Inc.; Harison/Downey Construction, Inc.; and Builders Guild, Inc. Construction Professionals.
- E. CONSIDERATION OF approving the third amendment to Cooperative Purchase Agreement C2017-045 with M.R. Tanner Development and Construction, Inc. for asphalt replacement and miscellaneous work in an amount not to exceed \$8,500,000.
- F. DISCUSSION WITH POSSIBLE DIRECTION amending or repealing the Public Art ordinance.
- G. DISCUSSION WITH POSSIBLE DIRECTION relating to any item included in the League of Arizona Cities and Towns' weekly Legislative Bulletin(s) or relating to any action proposed or pending before the State Legislature.

9. COUNCIL DISCUSSION/DIRECTION to the TOWN MANAGER

Item(s) listed below are related only to the propriety of (i) placing such item (s) on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council:

10. ADJOURNMENT.

AGENDA POSTED:

3-13-19

Date


Elizabeth A. Burke, Town Clerk

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 480-816-5100 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in the meeting or to obtain agenda information in large print format. Supporting documentation and staff reports furnished the Council with this agenda are available for review in the Clerk's Office.



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular

Agenda Type: Consent

Submitting Department: Administration

Staff Contact Information: Elizabeth A. Burke, Town Clerk, 480-816-5115; eburke@fh.az.gov

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF approving the Town Council Meeting Minutes from the Special Meeting of March 5, 2019, and the Regular Meeting of March 5, 2019.

Applicant: NA

Applicant Contact Information: NA

Owner: N/A

Owner Contact Information: NA

Property Location: NA

Related Ordinance, Policy or Guiding Principle: A.R.S. §38-431.01

Staff Summary (background): The intent of approving previous meeting minutes is to ensure an accurate account of the discussion and action that took place at that meeting for archival purposes. Approved minutes are placed on the Town's website and maintained as permanent records in compliance with state law.

Risk Analysis (options or alternatives with implications): NA

Fiscal Impact (initial and ongoing costs; budget status): NA

Budget Reference (page number): NA

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): NA

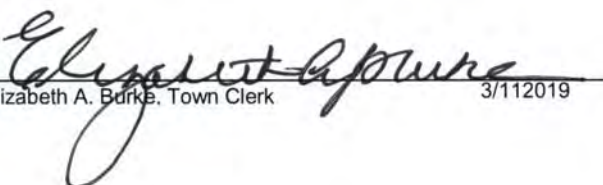
Staff Recommendation(s): Approve

List Attachment(s): Minutes of the Special Meeting of March 5, 2019, and the Regular Meeting of March 5, 2019.

SUGGESTED MOTION (for Council use): MOVE to approve the consent agenda as listed.

Prepared by:

Approved:


Elizabeth A. Burke, Town Clerk 3/11/2019


Grady E. Miller, Town Manager 3/11/2019

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE SPECIAL MEETING OF THE
FOUNTAIN HILLS TOWN COUNCIL
MARCH 5, 2019**

1. CALL TO ORDER – Mayor Ginny Dickey

Mayor Dickey called the Special Meeting of March 5, 2019, to order at 4:32 p.m.

2. ROLL CALL – Mayor Ginny Dickey

COUNCILMEMBERS PRESENT: Mayor Ginny Dickey; Vice Mayor Art Tolis; Councilmembers Mike Scharnow, Dennis Brown, Alan Magazine, Sherry Leckrone (telephonically) and David Spelich.

COUNCILMEMBERS ABSENT: None.

STAFF PRESENT: Town Manager Grady Miller; Town Attorney Aaron D. Arnson; Public Works Director Justin Weldy; and Town Clerk Elizabeth A. Burke.

3. VOTE TO GO INTO EXECUTIVE SESSION

Councilmember Brown **MOVED** to recess into Executive Session; **SECONDED** by Councilmember Magazine; passed unanimously. The Fountain Hills Town Council recessed into Executive Session at 4:32 p.m.

4. EXECUTIVE SESSION:

A. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation; and discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to A.R.S. §§38-431.03(A)(4) and (7), respectively.

i. Fire Station #2 located on Saguaro

B. Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to A.R.S. §38 431.03(A)(3).

i. Epcor's proposed rate increase

5. ADJOURNMENT

The Fountain Hills Town Council reconvened into Open Session at 5:15 p.m. at which time the Special Meeting of March 5, 2019, adjourned.

Ginny Dickey, Mayor

ATTEST:

Elizabeth A. Burke, Town Clerk

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR MEETING OF THE
FOUNTAIN HILLS TOWN COUNCIL
MARCH 5, 2019
REGULAR MEETING**

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE – Mayor Ginny Dickey

Mayor Dickey called the meeting of March 5, 2019, to order at 5:30 p.m.

2. INVOCATION – Pastor Bill Good, Fountain Hills Presbyterian Church

Pastor Good gave the invocation.

3. ROLL CALL – Mayor Ginny Dickey

COUNCILMEMBERS PRESENT: Mayor Ginny Dickey; Vice Mayor Art Tolis; Councilmembers Mike Scharnow, Dennis Brown, Alan Magazine, Sherry Leckrone and David Spelich.

COUNCILMEMBERS ABSENT: None.

STAFF PRESENT: Town Manager Grady Miller, Town Attorney Aaron D. Arnson, and Town Clerk Elizabeth A. Burke.

4. MAYOR'S REPORT

None

5. SPECIAL PUBLIC APPEARANCES/PRESENTATIONS

None

6. CALL TO THE PUBLIC

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Bob Shelstrom, Fountain Hills, voiced concerns with the bidding process used by the Town and the need for a quality improvement approach. He said that their process was a big fail.

Councilmember Magazine said that he was waiting for the day that Mr. Shelstrom comes before Council and tells them they have done something right.

7. CONSENT AGENDA ITEMS

All items listed on the Consent Agenda are considered to be routine, non-controversial matters and will be enacted by one motion and one roll call vote of the Council. All motions and subsequent approvals of consent items will include all recommended staff stipulations unless otherwise stated. There will be no separate discussion of these items unless a councilmember or member of the public so requests. If a councilmember or member of the public wishes to discuss an item on the Consent Agenda, he/she may request so prior to the motion to accept the Consent Agenda or with notification to the Town Manager or Mayor prior to the date of the meeting for which the item was scheduled. The items will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- A. APPROVAL OF the minutes of the Regular Meeting of February 19, 2019.
- B. CONSIDERATION OF adopting Resolution 2019-09, abandonment of the 10' Public Utility and Drainage Easement at the rear and a portion of the southerly side of Plat 204, Block 11, Lot 6 (11012 N. Walsh Drive), as recorded in Book 142, Page 10, records of Maricopa County, Arizona. (EA 2019-03)
- C. CONSIDERATION OF approving a Special Event Liquor License Application submitted by the Fountain Hills Cultural and Civic Association (Vicky Derksen), for the Dark Skies Fest event to be held at the Community Center and Centennial Circle, 13001 N. La Montana Drive, Fountain Hills, AZ from 4:00PM to 9:30 PM on Saturday, March 30, 2019.

Councilmember Magazine **MOVED** to approve Consent Agenda Items 7-A through 7-C; **SECONDED** by Councilmember Brown; passed unanimously.

8. REGULAR AGENDA

- A. CONSIDERATION OF:
 - i. Approval of a Special Event Liquor Application for the Town of Fountain Hills to provide and serve alcohol within Fountain Park, located at 12925 N. Saguaro Boulevard in Fountain Hills, in conjunction with the Town's Fountain Hills Music Fest Celebration, from 4:00 PM to 9:30 PM, on Saturday, April 6, 2019; and

Town Manager Miller said that this was a request for a Special Event liquor license for the Town's upcoming Music Fest on April 6. He said that in the past they have had residents requesting to have beer and wine at this event. Staff reached out to a company that is a local microbrewery, but because they are not a nonprofit they could not obtain a license.

He said that the State now allows Special Event licenses for governments so this item is to approve the Special Event liquor license application on behalf of the Town, and then to approve an agreement between the Town and Bone Haus Brewery. He said that any sales over \$4,000 will be split between the Town (60%) and Bone Haus (40%). He said that the Town has also taken out a modest-priced insurance rider to make sure the Town is protected.

Vice Mayor Tolis said that he was glad that they were doing everything they can to bring in visitors. He loved the billboard on Beeline that was paid for by a grant. He asked for clarification on how the \$4,000 came about.

Communications and Marketing Coordinator Grace Rodman-Guetter came forward and said that through conversations with Bone Haus it was determined that their wholesale costs to bring out their cooling truck, hire staff, and provide a minimum of 20 kegs, were around \$4,000. She said that since Town staff cannot pour beer, and they were asking Bone Haus to provide the staff, they split the responsibility. The Town would handle the liquor permit, pay for extra officers, and Bone Haus would provide the staffing.

Mr. Miller added that there is no risk to the Town. He said that if the event was all weekend the insurance rider would cost the same.

Ms. Rodman-Guetter said that since this is new, and they have advertised the added component of liquor, they believe that it will bring in a larger crowd. She said that if they do not reach the \$4,000 in sales, Bone Haus will not require the Town to pay.

Councilmember Scharnow **MOVED** to approve the special event liquor license application and the agreement with Bone Haus Brewery; **SECONDED** by Vice Mayor Tolis; passed unanimously.

- ii. Approval of an agreement with Bone Haus Brewery to provide and serve alcohol at the above event.

See above.

B. CONSIDERATION OF approval of contract with Willdan for User Fee Study.

Mr. Miller said that the Town has been trying to evaluate their situation with regard to revenues. He said that this is a contract with Willdan Financial to conduct a User Fee Study to examine everything they do in the Town, what they charge, and consider the actual overhead costs for each service. They will then come back and present their findings. He said that he cannot remember the last time the Town has had a comprehensive study done.

Mr. Arnson said that while the statutes do not require an actual study to be done, it does require the amount of any fee to be reasonably related to the cost of the service.

Councilmember Spelich voiced concern with spending \$36,000 when the Town's directors could do the work and save that money.

Councilmember Leckrone asked how they have landed on the fees in the past. Mr. Miller said that every year they have a fee schedule come before Council as part of the budget. He said that while they have those fees, they do not have an accurate justification for them. He said that this study will not only determine actual

costs for the different services, but also provide a methodology that staff can use in the future to continue adjusting fees as needed. Mr. Miller added that with the Town's lean staff it would take months to get things done if they were to attempt to do this work themselves, and he was not sure that they are qualified to account for all of the expenses.

Councilmember Magazine said that he has no idea what the results would be, but he would guess that a number of the fees would be raised and he would think that \$36,000 could be recovered within a year or two from now. Then they continue to have increased income. He said that it may be a lot of money, but it will help put more money in their pockets in the future.

Mr. Rudolphy said that he did not have a figure in front of him, but he could share that ten percent of the Town's budget comes from fees, so they would probably be looking at around \$1,000,000 annually in revenue from fees. He said that several years ago the Legislature passed a bill requiring towns to post on the website any fee changes at least 60 days prior to changes, and provide the justification. At this point they really do not have any justification.

Vice Mayor Tolis asked if the community center was booked every weekend. Community Services Director Rachael Goodwin said that the community center is very seasonable. Right now they are booked seven days a week, but if they look at July through September, it is slower.

Councilmember Scharnow said that while he agrees that \$36,000 is a lot of money, in addition to getting the methodology, it would be wise and helpful moving forward to have an independent third party come in and evaluate them with an independent recommendation.

Brief discussion was held on the difference of user fees and development impact fees. Mr. Rudolphy said that Tischler Bise has been hired to do the study for development impact fees. For that study they are paying between \$49,000 and \$50,000. Councilmember Brown said that the development fee study is required to be done every five years and the state tells the Town where those monies can be spent.

Councilmember Brown said that he did not remember the user fees being looked at before and he commended staff for bringing this forward.

Bob Shelstrom, Fountain Hills, thanked the Town Council for including the contract in the packet. He has read it and it sounds like a good idea. He wondered if there would be any overlap between the two studies.

Mr. Rudolphy said that the user fee study contract was a result of a Request for Proposals (RFP). He said that the Town received eight responses and after an evaluation team was formed and reviewed the proposals, Willdan was the successful respondent with the lowest cost for the services. In the scope of the RFP, the development impact fees were specifically excluded.

Mayor Dickey said that the development impact fees can only be used for actual expenses related to growth. She said that the Town's budget is dependent on these fees being received.

Councilmember Leckrone said that they may find that they are charging enough for the services, but if they are not then they are losing money and she is in favor of proceeding with the study.

Brief discussion was held on whether the Council should hold a work session on the issue.

Councilmember Magazine **MOVED** to approve the contract with Willdan Financial Services for the User Fee Study; **SECONDED** by Councilmember Scharnow.

Michelle Webb, Fountain Hills, said that they need to find out the break even and then what others charge. She volunteered to make calls to determine what other communities charge for their services.

Discussion was held on the inability to compare apples to apples when considering what others charge because the Town's expenses are unique to Fountain Hills. Mr. Miller said that they are trying to get this done this summer, but do not believe it will be ready until the next fiscal year. His hope would be to change fees in January.

Mayor Dickey said that she would prefer to have the study done. If they started counting up the hours of staff time to have it done in house, it would take away from other things they need to do, and they need to move forward.

Motion passed 5 – 2 with Vice Mayor Tolis and Councilmember Spelich casting the dissenting votes.

- C. CONSIDERATION OF adopting Resolution 2019-14 approving an IGA with the Fountain Hills Sanitary District for two restroom facilities and well control rooms at Fountain Park.

Mr. Miller said that this was the intergovernmental agreement authorizing the installation of two bathrooms at the two locations at Fountain Park that were previously presented to Council. Based on feedback from Councilmember Brown, they will be having the door at the back of the building leading into the custodial close moved to the front so it is more efficient. They were concerned with any other changes to the actual footprint of the buildings increasing costs, so the other requested changes were not considered.

Mr. Miller said that the Town will be looking at about \$5,000 a year for stocking paper goods and associated maintenance costs. Ms. Goodwin said that this will be going to the Sanitary District's board within the next few weeks and they are looking to having construction done right after High School graduation and hope to be done prior to Oktoberfest Festival, during the lowest usage of the year.

Vice Mayor Tolis said that he had heard that the original cost estimates were way off and asked if staff knew if that would adversely affect the District's decision to

proceed with the project. Ms. Goodwin said that she has not heard that. She said that there is an opt out available for both the District and the Town.

Councilmember Spelich voiced concern with the Town not having enough staff to handle the added maintenance of these facilities. Ms. Goodwin said that they have one full-time staff that services the entire park, and several part-time in the evenings and weekends. She said that it will add more to the workload, but it is an amenity desperately needed.

Bob Shelstrom, Fountain Hills, said that he has the actual report for the cost and it is \$3.9 million. He is from Chicago and nothing gets done there unless there is something in it for someone else. He looked into how many bathrooms they should have at the park. They do not need the facilities. He said that the Town Council needs to work closer with the Sanitary District to see what is fair to the citizens of Fountain Hills; it is getting out of control.

Councilmember Brown **MOVED** to adopt Resolution 2019-14; **SECONDED** by Councilmember Magazine; passed unanimously.

- D. CONSIDERATION OF Resolution 2019-015 approving the Town of Fountain Hills, Arizona Town Council Rules of Procedure, amended and restated March 5, 2019.

Town Clerk Elizabeth Burke briefly reviewed the changes being proposed which were previously discussed by Council at their recent Retreat.

Discussion was held on the difference between Open Meeting Law and Robert's Rules of Order.

Councilmember Scharnow **MOVED** to adopt Resolution 2019-15 approving the amended and restated Rules of Procedure; **SECONDED** by Councilmember Leckrone; passed unanimously.

- E. DISCUSSION WITH POSSIBLE DIRECTION relating to any item included in the League of Arizona Cities and Towns' weekly Legislative Bulletin(s) or relating to any action proposed or pending before the State Legislature.

Brief discussion was held on the legislation being considered this week. Mayor Dickey said that some of the things they previously took positions on have progressed. She said that the short-term rental, 2672, went to Rules yesterday and COW today. Mr. Arnson reported that the internet has not updated any action taken today on that bill. Mayor Dickey said that if possible, she would like to have Mr. Miller write a note to Representative Bowers to support 2672 and oppose 2201 (partisan local elections) and 2043 (municipal judges to elections).

Vice Mayor Tolis said that two of the bills are sponsored by the Town's local representative and he still feels it is important to invite him to a meeting even though they are in session.

Councilmember Magazine said that HB2672, vacation rentals, passed one committee and may become law. He asked, with so much controversy in town, what the practical impact of that would be versus what they have now. Mr. Arnson said that what he is saying could have changed on the floor today, but the most significant restrictions are on the number of persons on site being based on bedrooms.

Mr. Miller said that with the way the bill stands, there was a section that allowed cities and towns to regulate for the health, safety and welfare, which has to do with upholding their zoning. In the case of a home being a wedding venue, the Town could enforce that now. He said that they are supposed to be in commercially-zoned areas, but it does not mean that a homeowner could not have a wedding in their own home.

Councilmember Scharnow **MOVED** to have Mr. Miller send a note to Representative Bowers in support for 2672 and opposition of 2201 and to Senator Fann in support of the League's position to oppose 1460; **SECONDED** by Councilmember Magazine; passed unanimously.

9. COUNCIL DISCUSSION/DIRECTION to the TOWN MANAGER

Item(s) listed below are related only to the propriety of (i) placing such item (s) on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council:

Vice Mayor Tolis said that they have spoken in the past about public safety issues and many incidents involving pedestrians, and he would like to see some action being taken. Mr. Miller reported that he and the Mayor had this same conversation and agreed that anything that could be done should just be done. He said that the Mayor also suggested an internal team including herself, another member of Council, the Public Works Director, Police Captain, and Town Manager to see what other steps could be taken, such as rumble strips before stop signs and illuminating stop signs. He said that they will be coming back and reporting on what steps have been taken. Councilmember Magazine said that he would like to see reflectors on all stop signs and yield signs.

10. SUMMARY OF COUNCIL REQUESTS and REPORT ON RECENT ACTIVITIES by the Mayor, individual Councilmembers, and the Town Manager.

Mr. Miller reported that last week he and the Mayor met with Sheriff Penzone, Chief of Staff Cherny and Chief Deputy Skinner as the Sheriff likes to meet with the contract cities. They also discussed the incident that happened a few months ago to see if there is anything to be done to make it more secure. He said that staff has reviewed a report that came out of the Sheriff's Homeland Security Office which looked at the entire facility. He said that it was also a good opportunity to talk about the rate increase being proposed by their office and the County was told that the Town is studying their options related to that.

Mayor Dickey thanked Vice Mayor Tolis and Councilmember Scharnow for participating in the Town Talk last Tuesday.

Moving back to Item #9, Vice Mayor Tolis said that during the Retreat the Town Council talked about improving on zoning areas and helping businesses be successful. An idea

that came up many years ago was to look at Saguaro and the frontage road, and work with those property owners to determine if there is a way to redesign that to eliminate the frontage road to provide additional parking. He would like to put this on a future agenda to discuss further.

Mayor Dickey reported that the Mayor from Altaco, El Salvador will be holding an event at Town Hall on Thursday at 5:30 p.m. and they will be meeting with the schools.

Councilmember Scharnow said that he was at a meeting of the Fountain Hills Coalition last week and the Town had received an award during a previous program that Town could not attend so he wanted to present to the Council a plaque from Arizonans Concerned about Smoking for the Town's ordinance that was passed last year banning smoking in public parks along with e-cigarettes and vaping. Mayor Dickey said that Vice Mayor Tolis and Councilmembers Brown and Magazine were on the Council at that time and she would like to have a photograph taken after the meeting with the plaque. Councilmember Scharnow reported that the group is also pursuing another item to increase the legal age to buy tobacco products to 21 and they may ask for action by the Council in the future.

11. ADJOURNMENT.

Vice Mayor Tolis **MOVED** to adjourn; **SECONDED** by Councilmember Brown; passed unanimously.

The Regular Meeting of the Fountain Hills Town Council held March 5, 2019, adjourned at 6:49 p.m.

TOWN OF FOUNTAIN HILLS

Ginny Dickey, Mayor

ATTEST AND PREPARED BY:

Elizabeth A. Burke, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Session held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 5th day of March, 2019. I further certify that the meeting was duly called and that a quorum was present.

DATED this 19th day of March, 2019.

Elizabeth A. Burke, Town Clerk

NOTE: For further details on the discussion of a particular agenda item, please visit <http://www.fh.az.gov/agendacenter> to view a video of the entire Council Meeting.



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Community Services

Staff Contact Information: Rachael Goodwin, Community Services Director, rgoodwin@fh.az.gov

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF approving an EXTENSION OF PREMISES APPLICATION submitted by Merita Kraya representing Euro Pizza Cafe located at 12645 North Saguardo Blvd, Fountain Hills, AZ. who will be hosting a beer garden in conjunction with Bone Haus Brewery on April 13, 2019.

Applicant: Merita Kraya

Applicant Contact Information: (480) 836-0208, 12645 North Saguardo Blvd. Fountain Hills, AZ 85268

Owner: Same

Owner Contact Information: Same

Property Location: 12645 North Saguardo Blvd, Fountain Hills, AZ 85268

Related Ordinance, Policy or Guiding Principle: A.R.S. §4-203.02; 4-244; 4-261 and R19-1-228, R19-1-235, and R19-1-309

Staff Summary (background): The purpose of this item is to obtain Council's approval regarding the special event liquor license application submitted by Merita Kraya representing Euro Pizza Cafe for submission to the Arizona Department of Liquor. This extension of premises permit is being obtained for the purpose of holding a beer garden in conjunction with Bone Haus Brewery. The application was reviewed by staff for compliance with Town ordinances and staff recommends approval of this special event liquor license application as submitted.

Risk Analysis (options or alternatives with implications): N/A

Fiscal Impact (initial and ongoing costs; budget status): N/A

Budget Reference (page number): N/A

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s): Approve

List Attachment(s): Applications

SUGGESTED MOTION (for Council use): Move to approve the Extension of Premises permit.

Prepared by:

Prepared by:

NA 12/18/2018

Director's Approval:

Rachael Goodwin, Community Services Director 3/6/2019

Approved:


Grady E. Miller, Town Manager

3/6/2019



TOWN OF FOUNTAIN HILLS ALCOHOL APPENDIX B

Event: Bone Hews Beer Tasting @ Euro Pizza Cafe
Date of Event: 4/13/19

Available online at <http://www.fh.az.gov/284/Special-Events>

SUBMITTING YOUR ALCOHOL APPENDIX B FORM

- Alcohol applications must be submitted with the completed event application a minimum of 90 days prior to the proposed start date of your event.

ATTACHMENTS CHECKLIST

Refer to the code excerpts in this document as to whether or not you must submit the following. For a full listing of all attachments, visit www.fh.az.gov/specialeventsapplication

When applicable, attach copies of:

- ☐ Business/Vendor License(s) (See Appendix A)
- ☒ State Liquor Application (Completed)

ALCOHOL MANAGEMENT PLAN

Any group requesting to serve alcohol in the Town of Fountain Hills at a special event **MUST comply with Town Code Chapter 8**. Any facilitation, selling or provision of alcohol must have a valid alcohol permit. Alcohol permits can be found online at The Arizona Department of Liquor website. Alcohol application must be submitted with the Special Event Application.

Additional Documentation Required: If you requesting to serve alcohol at your event, you **MUST** attach copies of your Town issued Alcohol Application and State Liquor License.

Alcohol service and consumption on public property is allowed by special event permit only. If you are interested in serving alcohol at your event, you will need to obtain the appropriate license from the Arizona State Liquor Board and have your Town alcohol permit approved by the Town Council no later than 30 days prior to your event. Special Event Liquor License applications and/or an Extension of Premises application is required to be submitted with the Special Event Application. The Council will consider the permits for approval at their bi-monthly meetings on the first and third Thursdays of the month.

The Town of Fountain Hills **REQUIRES** that MCSO, or a uniformed event security company be present at all events serving alcohol. **NO EXCEPTIONS.**

The following rules must also be abided by:

- All alcohol must be sold and consumed within a fenced area.
- If the alcohol is accessible to all ages, anyone wishing to purchase or consume alcohol must present a current ID, and if that attendee is 21 years of age or older, they must be issued a non-transferrable wristband or other marker/indicator. All attendees must present their wristband/Stamp/Marker to be served or consume alcohol.
- Servers must be 21 years of age or older.
- Alcohol cups must be paper or plastic and be distinguishable from other, non-alcoholic, beverage cups.
- Service must end a minimum of 30 minutes before the scheduled event end time.
- Volunteers and/or Staff who are serving alcohol may **NOT** consume alcohol prior to, during, or between volunteer shifts.

We require all Staff members or Volunteers who are planning on consuming alcohol after their designated shift has ended, to remove any garment or badge that denotes them as event staff/volunteer before partaking in alcoholic consumption. We do not; under any circumstances permit volunteers to consume alcohol during volunteer breaks between shifts. Also, once a Staff member or Volunteer has consumed any alcohol, they may not come back on shift for the remainder of that day.

Are you requesting permission to serve alcohol at your event? ☐ Yes ☒ No

Type of Alcohol (Check all that apply): ☐ Beer ☐ Wine ☐ Distilled Spirits

Explain who will serve the alcohol (Professional bartenders, volunteers, etc.):

PIONEER HAWK Brewery bartenders will serve inside of Euro Pizza Cafe in conjunction w/ extension of Premises

How many alcohol service locations will you have, and where will they be located? (Include on site map):

ONE ~~to~~ inside cafe w/ extension of premises

Is the event open to all ages? ☒ Yes ☐ No

Explain how ID's will be checked, wristbands/stamps applied, and how you will prevent any underage drinking:

Wait staff who is trained under liquor license Regulations will check ID's.

WASTE MANAGEMENT/RECYCLING

You are responsible for properly disposing of all waste and garbage throughout the term of your event, and immediately upon conclusion of the event, the area must be returned to a clean condition. Should you fail to perform adequate clean up or damage occurs to the Town property, you will be billed at full recovery rates.

Waste managed through restaurant
Out by me



Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

DLIC USE ONLY

CSR:

Log #:

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT

OBTAIN APPROVAL FROM LOCAL GOVERNING BOARD BEFORE SUBMITTING TO THE DEPARTMENT OF LIQUOR

****Notice: Allow 30-45 days to process permanent change of premises****

☐ Permanent change of area of service. **A non-refundable \$50. Fee will apply.** Specific purpose for change:

☒ Temporary change **(No Fee)** for date(s) of: 04/13/19 through 04/13/19 list specific purpose for change:

extension of premises Beer garden with Bone Haus

1. Licensee's Name: Kraja Merita License# [REDACTED]
Last First Middle
2. Mailing address: 12645 N. Saguro Blvd 11 Fountain Hills AZ 85268
Street City State Zip Code
3. Business Name: Euro Pizza Cafe
4. Business Address: Same as above
Street City State Zip Code
5. Email Address: europizzacafe@cox.net
6. Business Phone Number: 480-836-0208 Contact Phone Number: 480-229-1288

7. Is extension of premises/patio complete?

☐ N/A ☐ Yes ☒ No

If no, what is your estimated completion date? 04/13/19

8. Do you understand Arizona Liquor Laws and Regulations?

☒ Yes ☐ No

9. Does this extension bring your premises within 300 feet of a church or school?

☐ Yes ☒ No

10. Have you received approved Liquor Law Training?

☒ Yes ☐ No

11. What security precautions will be taken to prevent liquor violations in the extended area? _____

guards by exit and entrance

12. **IMPORTANT:** Attach the revised floor plan, clearly depicting your licensed premises along with the new extended area outlined in black marker or ink, **if the extended area is not outlined and marked "extension" we cannot accept the application.**

☐ Barrier Exemption: an exception to the requirement of barriers surrounding a patio/outdoor serving area may be requested. Barrier exemptions are granted based on public safety, pedestrian traffic, and other factors unique to a licensed premises. List specific reasons for exemption:

☐ Approval ☐ Disapproval by **DLLC**: _____ Date: ____/____/____

Notary

I, (Signature) *Chris Lopez*, hereby declare that I am a **CONTROLLING PERSON/ AGENT** filing this notification. I have read this document and the contents and all statements are true, correct and complete.

State of Arizona)

County of Maricopa)

On this 4 Day of March, 2019 before me personally appeared Merita Idrizaj
Day Month Year (Print Name of Document Signer)

Whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and acknowledged that he or she signed the above/attached document.



RHONDA M. BRENNEMAN
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires June 30, 2019
(Affix Seal Above)

Rhonda M. Brenneman
Signature of NOTARY PUBLIC

GOVERNING BOARD

After completion, and **BEFORE submitting to the Department of Liquor**, please take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.

☐ Approval

☐ Disapproval

Authorized Signature

Title

Agency

Date

DLLC USE ONLY

Investigation Recommendation: ☐ Approval ☐ Disapproval by: _____ Date: ____/____/____

Director Signature required for Disapprovals: _____ Date: ____/____/____

Beer Garden
Area

exit

Entrance
guarded

Patio
fence

Patio

Euro Pizza Cafe

Patio
fence



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Marissa Moore, Senior Planner, mmoore@fh.az.gov

REQUEST TO COUNCIL (Agenda Language):

CONSIDERATION of FINAL REPLAT of the Final Plat of Palatial Estates, revising the Total Disturbance Allowance for Lot 4.

Case #S2019-01

Applicant and Owner: John Gurczak

Applicant Contact Information: 10810 N. Rosemont Ct., Fountain Hills, AZ, 85268

Property Location: 15436 E Palatial Circle, Fountain Hills

Related Ordinance, Policy or Guiding Principle:

Fountain Hills Subdivision Ordinance Article 2

Staff Summary (background):

The property owner approached Town staff in April 2018 regarding the limitations for development of the subject property. At first it appeared there was a Hillside Protection Easement on the property, and the applicant provided a narrative explaining why he is requesting the HPE be abandoned (see attached). Article 5, Section 5.02.C.4 states, "Single-Family Residential lots zoned R1-6, R1-6A, R1-8, R1-8A, R1-10 and R1-10A shall be 100% disturbable and exempt from the hillside disturbance limitations." This lot is zoned R1-8, and would therefore be exempt.

Upon further research of the history of the property, the now-expired Development Agreement, and the Final Plat for this subdivision, staff found that the disturbance allowance was actually specifically spelled out for each lot in a table on the Final Plat map. The methodology for calculating these amounts was explained in the Development Agreement, and greatly differs from what the Subdivision Ordinance and Zoning Ordinance required then, as well as what would be required today.

It is not uncommon for a number of different zoning regulations pertaining to a specific subdivision were recorded on the final plat map, e.g., setbacks, maximum building height, disturbance limits, and so forth. What this means is that when reviewing zoning information for any lot, it is necessary to also review the plat to see if there are any zoning regulations on the plat that differ from the base zoning regulations provided in the Subdivision and/or Zoning Ordinances.

The "SITE DATA" table on the Final Plat of Palatial Estates shows that the subject property, Lot 4, is allowed to have a maximum of 5,000 square feet of disturbance. A footnote to the table states:

"Slopes greater than 10% gradient - The disturbance allocation includes all disturbance necessary for development of a lot; including driveways, utility lines, house construction, grading/drainage, and any other construction activities. This disturbance allocation also includes any areas needed to be disturbed, even if those areas have been previously disturbed through the subdivision construction process".

However, subdivision improvements, installation of utilities, and other disturbance on this lot – before any development activities for a single-family residence - totaled approximately 6,800 square feet – an amount 1,800 square feet greater than the 5,000 square foot disturbance allowance. This not only made the lot non-compliant with the regulations provided on the recorded plat, but it also rendered it undevelopable, and at no fault of the property owner. The lot was subdivided with the intent to be developed as a single-family residence, so the applicant is requesting these restrictions be removed to be able to use the lot as it was intended.

In the attached narrative from the applicant (which was submitted with the original HPE abandonment request), the amount and types of disturbance that has occurred on this property, as well as the requirements in the Palatial Estates HOA's CC&R's, are detailed, and are applicable to the current request. Because the disturbance allowance was detailed on the Final Plat, a "Final *Replat*" is required to remove the disturbance allowance for this lot, which requires Town Council approval. The applicant has provided a "Final Replat of LOT 4, Palatial Estates", which includes a note stating, "Lot 4 is exempt from the disturbance allowance shown in the table on the Plat of Palatial Estates, Recorded in Book 774 of Maps, Page 8, Records of Maricopa County, Arizona."

The Town Engineer reviewed the original request and had no objections to removing disturbance limits.

Risk Analysis (options or alternatives with implications):

Approval of the replat will bring the subject lot into compliance with the development restrictions specified on the Final Plat map, and will allow the property to be developed with a single-family residence.

Denying the request to replat the property will mean the property remains in non-compliance with the restrictions set forth on the Final Plat map and is will remain undevelopable.

Fiscal Impact (initial and ongoing costs; budget status): NA

Budget Reference (page number): NA

Funding Source: NA

If Multiple Funds utilized, list here: NA

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s):

Staff recommends Town Council APPROVE the Final Replat of Lot 4 of the Final Plat of Palatial Estates. Case #S2019-01

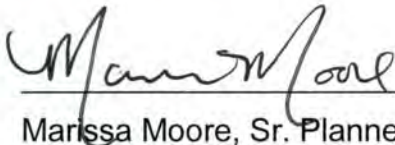
List Attachment(s):

Application
Original Narrative from applicant
Proposed Final Replat of Lot 4, Palatial Estates
Recorded Final Plat of Palatial Estates
Detail of Final Plat disturbance allowance table
Email from the Town Engineer dated April 30, 2018

SUGGESTED MOTION (for Council use)

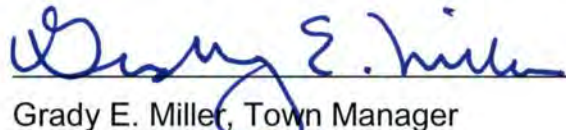
Move to APPROVE the Final Replat of Lot 4 of the Final Plat of Palatial Estates. Case #S2019-01

Prepared by:


Marissa Moore, Sr. Planner

3/11/2019

Approved:


Grady E. Miller, Town Manager

3/11/2019



01-17-19P04:47 RCVD
DO Not write in this space —official use only

Filing Date 1-17-19

Accepted By P. WOODWARD

Fee Accepted \$500. - ck # 1025

Case Manager MARISSA MOORE

The Town of Fountain Hills

\$500

PLANNING & ZONING DEPARTMENT - APPLICATION

☐ Abandonment (Plat or Condominium)	☐ Appeal of Administrator's Interpretation
☐ Area Specific Plan & Amendments	☐ Concept Plan
☐ Condominium Plat	☐ Cut/Fill Waiver
☐ Development Agreement	☐ HPE Change or Abandonment
☐ General Plan Amendment	☐ Ordinance (Text Amendment)
☐ Planned Unit Development	☐ Preliminary / Final Plat
☒ Replat (Lot joins, lot splits, lot line adjustments)	☐ Special Use Permit & Amendments
☐ Rezoning (Map)	☐ Temporary Use Permit (Median Fee, if applicable)
☐ Site Plan Review (vehicles sales)	☐ Other
☐ Variance	

PROJECT NAME / NATURE OF PROJECT: Replat

LEGAL DESCRIPTION: Plat Name Palatial Estates Block _____ Lot _____

PROPERTY ADDRESS: 15436 E Palatial Circle

PARCEL SIZE (Acres): .53 **ASSESSOR PARCEL NUMBER** 176-13-962

NUMBER OF UNITS PROPOSED _____ **TRACTS** _____

EXISTING ZONING R1-8 **PROPOSED ZONING** R1-8

Applicant

☒ Mrs. John Gurczak Day Phone 480-272-1308

☒ Mr. _____

☐ Ms. Address: 10810 N. Rosemont Ct. City: FH State: AZ Zip: 85268

Email: John.Gurczak@gmail.com

Owner

☐ Mrs. Same as above Day Phone _____

☐ Mr. _____

☐ Ms. Address: _____ City: _____ State: _____ Zip: _____

If application is being submitted by someone other than the owner of the property under consideration, the section below must be completed.

SIGNATURE OF OWNER _____ **DATE** _____

I HEREBY AUTHORIZE _____ TO FILE THIS APPLICATION.

Please Print

Subscribed and sworn before me this _____ day of _____, 20_____.

My Commission Expires _____

Notary Public

MUNIS 9430
APPLICATION # 52019-01

Book 774, page 8

Request to Abandon Hillside Protection Easement
Lot 4 - Palatial Estates
APN:176-13-962

Outline: This is a request to abandon the Hillside Protection Easement associated with Lot 4, in Palatial Estates. Under the current hillside disturbance restrictions, the lot is unbuildable. Abandonment of the HPE is requested on the basis that the lot is Zoned R1-8, which under current Zoning Code, Fountain Hills Subdivision Ordinance Section 5.02.C.4, is exempt from Hillside Disturbance Limitations.

On the Final Plat of Palatial Estates(Attached), Lot 4 was given a total disturbance allowance of 5,000 sq. ft. This disturbance applies to

“Slopes greater than 10% gradient – The disturbance allocation includes all disturbance necessary for the development of a lot; including driveways, utility lines, house construction, grading/drainage and any other construction activities. This disturbance allocation also includes any areas needed to be disturbed, even if those areas have been previously disturbed through the subdivision construction process.”

Along all directions of the property are utility easements(North – 20 ft. Sewer, West – 10 ft. Sewer, South – 8 ft. PUE, East – 8ft PUE), with utility lines running through them. The west, south & east easements all run through “hillside” & thus would count as disturbance since they were “previously disturbed through the subdivision construction process. There are also existing retaining walls at the southwest corner of the property that were built during the subdivision construction process, to accommodate the utility boxes and sidewalk.

There is approximately 6,800 sq. ft. of existing disturbance that was done through the subdivision construction process, which is already higher than the current allowable disturbance.

Per the Palatial Estates HOA CC&R's & Design Guidelines, the minimum build required is 3,000 sq. ft. for a single story home and 2,500 sq. ft. main level, 3000 sq. ft. total for a two story home. A three car garage is also a requirement. Including the driveway, front landscaping and a backyard adds several thousand sq. ft. of additional necessary disturbance. Given these requirements and existing disturbance, it is currently not possible to build on this lot. The average sq. footage of a house in Palatial Estates is 4,500 sq. ft. It is my intention to build a 3,500 sq. ft. single story house, with a 3 car garage, that conforms to the rest of the neighborhood.

The current zoning on the lot is R1-8. I am requesting total exemption from the Hillside Disturbance Allowance per Section 5.02.C.4 of the Fountain Hills Subdivision Ordinance, which exempts lots Zoned R1-8 from any Hillside Restrictions.

DEDICATION:

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS THAT JOHN GURCZAK AND ANDREW GURCZAK, AS OWNERS, HAVE REPLATED LOT 4, PALATIAL ESTATES, RECORDED IN BOOK 774 OF MAPS, PAGE 8, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASELINE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON, AND HEREBY PUBLISHES SAID PLAT AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOT AND EASEMENTS CONSTITUTING THE SAME, AND THAT THE LOT SHALL BE KNOWN BY THE NUMBER GIVEN IT ON SAID PLAT. OWNERS HEREBY DEDICATE TO THE TOWN OF FOUNTAIN HILLS AND THE PUBLIC UTILITY COMPANIES THE EASEMENTS FOR THE PURPOSE INDICATED ON SAID PLAT.

IN WITNESS WHEREOF, THAT JOHN GURCZAK AND ANDREW GURCZAK, AS OWNERS, HAVE SET THEIR HANDS

ON THIS _____ DAY OF _____ 2019

SIGNED:

JOHN GURCZAK

ANDREW GURCZAK

ACKNOWLEDGEMENT:

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS THAT:

ON THIS _____ DAY OF _____ 20____, BEFORE ME THE UNDERSIGNED, PERSONALLY APPEARED JOHN GURCZAK AND ANDREW GURCZAK, WHO ACKNOWLEDGE THAT THEY EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES CONTAINED THEREIN.

IN WITNESS WHEREOF, I HEREBY SET MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC

MY COMMISSION EXPIRES _____

TOWN APPROVAL:

APPROVED BY THE TOWN COUNCIL OF FOUNTAIN HILLS, ARIZONA, THIS _____

DAY OF _____ 2019

BY: _____
MAYOR

ATTEST: _____
TOWN CLERK

APPROVAL:

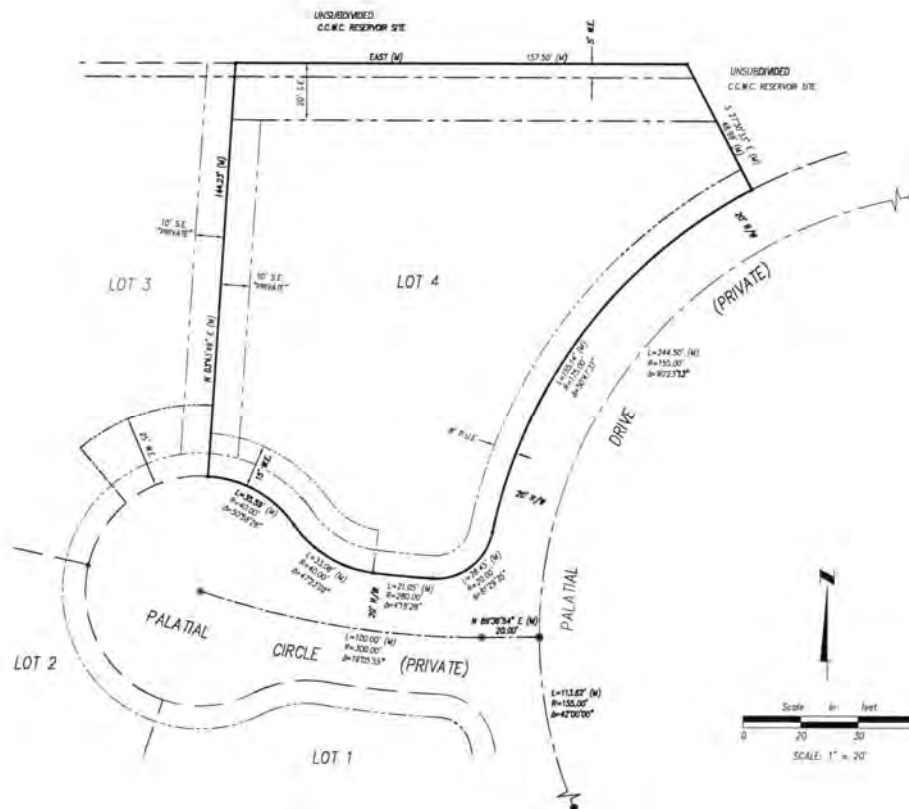
APPROVED BY THE TOWN ENGINEER AND THE DEVELOPMENT SERVICES DIRECTOR:

BY: _____ DATE: _____
TOWN ENGINEER

BY: _____ DATE: _____
DEVELOPMENT SERVICES DIRECTOR

FINAL REPLAT OF LOT 4, PALATIAL ESTATES

BEING A REPLAT OF LOT 4, PALATIAL ESTATES, RECORDED IN BOOK 774 OF MAPS, PAGE 8, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASELINE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.



LEGEND

- FOUND BRASS CAP
- FOUND REBAR #33886
- SET REBAR #33866
- ▲ SET NAIL AND WASHER #33866
- (M) MEASURED BEARING AND DISTANCES
- P.U.E. PUBLIC UTILITIES EASEMENT
- S.E. SEWER EASEMENT
- W.E. WALL EASEMENT

ASSURED WATER SUPPLY

THIS PLAT IS LOCATED WITHIN THE EPICOR WATER SERVICE AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY.

CERTIFICATION

THIS IS TO CERTIFY THE SURVEY AND SUBDIVISION PREMISES DESCRIBED AND PLATTED HEREON WERE MADE UNDER MY DIRECTION DURING THE MONTH OF JANUARY 2019, THAT THE PLAT IS CORRECT AND ACCURATE, THAT THE MONUMENTS SHOWN HEREON HAVE BEEN LOCATED OR ESTABLISHED AS DESCRIBED AND LOT CORNERS HAVE BEEN PERMANENTLY SET.

LLOYD E. PEW, RLS #33866

OWNER

JOHN GURCZAK AND
ANDREW GURCZAK

LEGAL DESCRIPTION

LOT 4, PALATIAL ESTATES, A SUBDIVISION RECORDED IN BOOK 774 OF MAPS, PAGE 8, RECORDS OF MARICOPA COUNTY, ARIZONA.

NOTES:

1. ANY PUBLIC SEWER IS TO BE CONSTRUCTED PER THE FOUNTAIN HILLS SANITARY DISTRICT'S FACILITIES DESIGN STANDARDS.
2. ALL WATER LINES ARE TO BE OWNED BY AND CONSTRUCTED PER EPICOR WATER DESIGN PROCEDURES AND CRITERIA.
3. PROPERTY OWNERS ARE HEREBY NOTIFIED THAT LOT TO LOT SURFACE DRAINAGE IS ANTICIPATED AND SHALL BE ACCEPTED.
4. CONSTRUCTION WITHIN UTILITY EASEMENTS IS LIMITED TO UTILITIES AND REMOVABLE TYPE FENCING.
5. EACH PROPERTY OWNER IS RESPONSIBLE TO MAINTAIN RIGHT-OF-WAY FRONTAGE, LANDSCAPING AND VEHICULAR SIGHT LINES IN A MANNER THAT PROVIDES SAFE VEHICULAR SIGHT VISIBILITY AS REQUIRED BY THE TOWN ENGINEER.
6. NO UTILITY MODIFICATIONS HAVE BEEN MADE AS A REQUIREMENT FOR THIS PLAT.
7. LOT 4 IS EXEMPT FROM THE DISTURBANCE ALLOWANCE SHOWN IN THE TABLE ON THE FINAL PLAT OF PALATIAL ESTATES, RECORDED IN BOOK 774 OF MAPS, PAGE 8, RECORDS OF MARICOPA COUNTY, ARIZONA.

LOCATION MAP NOT TO SCALE



PEW SURVEYING.

P.O. Box 18211
Fountain Hills, AZ 85269
(480) 239-1807
E-mail: lpew@pew-surveying.com
www.pew-surveying.com

Project:
Drawn by:
Checked:
Date:

CONVEYANCE AND DEDICATION:

KNOW ALL MEN BY THESE PRESENTS THAT SHEA HILLS DEVELOPMENTS LTD, AS OWNER, HAS SUBMITTED UNDER THE NAME OF PALATIAL ESTATES, BEING A PORTION OF SECTIONS 21 AND 28, TOWNSHIP 3 NORTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AS SHOWN PLATTED HEREON, AND HEREBY PURCHASES THIS PLAT AS AND FOR THE PLAT OF SAID PALATIAL ESTATES, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF ALL LOTS, EASEMENTS AND TRACTS CONSTITUTING THE SAME, AND THAT EACH LOT AND TRACT SHALL BE KNOWN BY THE NUMBER OR LETTER GIVEN EACH RESPECTIVELY, AND THAT SHEA HILLS DEVELOPMENTS LTD, AS OWNER, HEREBY DEDICATES TO THE PUBLIC FOR USE AS SUCH THE EASEMENTS FOR DRAINAGE, UTILITIES AND ACCESS FOR EMERGENCY VEHICLES, GARBAGE COLLECTION AND MAIL DELIVERY OVER TRACT G AND THE PUBLIC UTILITY EASEMENTS AS SHOWN ON SAID PLAT, AND THAT SHEA HILLS DEVELOPMENTS LTD, AS OWNER, HEREBY DEDICATES TO THE PALATIAL ESTATES P.O.A. FOR USE AS SUCH TRACTS B, C, D, E, F AND G.

TRACT A IS DEDICATED TO THE TOWN OF FOUNTAIN HILLS.
TRACT B IS DEDICATED AS H.U.P.E. AND D.E.
TRACT C IS DEDICATED AS H.U.P.E. AND D.E.
TRACT D IS DEDICATED AS P.U.E., W.E. AND AN ACCESS EASEMENT FOR C.C.W.C.
TRACT E IS DEDICATED AS A D.E. FOR WALNUT WASH.
TRACT F IS DEDICATED AS PRIVATE STREET, P.U.E., D.E. AND ACCESS EASEMENT.

IN WITNESS SHEA HILLS DEVELOPMENTS LTD, AS OWNER, HAS HEREUNTO CAUSED THEIR NAME TO BE SIGNED AND THE TO BE ATTESTED BY THE SIGNATURE OF ITS PROPER OFFICER.

SIGNED: SHEA HILLS DEVELOPMENTS LTD

BY: *[Signature]*

ITS: *[Signature]*

DATE: 8-15-05

NOTARY ACKNOWLEDGMENT:

STATE OF ARIZONA } S.S.
COUNTY OF MARICOPA }

ON THIS, THE 18th DAY OF August, 2005, BEFORE ME, THE UNDERSIGNED PERSONALLY APPEARED *[Signature]* WHO ACKNOWLEDGES THAT HE EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES CONTAINED THEREIN.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL

BY: *[Signature]*

NOTARY PUBLIC

MY COMMISSION EXPIRES

TOWN APPROVAL

APPROVED BY THE TOWN COUNCIL OF FOUNTAIN HILLS, ARIZONA, THIS 23rd DAY OF August, 2005.

BY: *[Signature]*

MAYOR

ATTEST: *[Signature]*

TOWN CLERK

APPROVALS:

THIS PLAT WAS APPROVED BY THE TOWN ENGINEER AND THE COMMUNITY DEVELOPMENT DIRECTOR.

BY: *[Signature]*

TOWN ENGINEER

DATE: 8-23-05

BY: *[Signature]*

COMMUNITY DEVELOPMENT DIRECTOR

DATE: 8-25-05

ASSURANCE STATEMENT

ASSURANCE IN THE FORM OF A LETTER OF CREDIT ISSUED FROM *[Signature]* IN THE AMOUNT OF \$ 683,000. HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED SUBDIVISION IMPROVEMENTS.

FINAL PLAT OF PALATIAL ESTATES

BEING A PORTION OF SECTIONS 21 AND 28, T 3 N, R 6 E,
GILA & SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA
FOUNTAIN HILLS, ARIZONA

SITE DATA

LOT	AREA	* TOTAL DISTURBANCE ALLOWANCE
1	148.81	148.81
2	17,267.77	17,267.77
3	43,576.10	18,020.00
4	20,716.00	12,982.00
5	23,082.00	5,000.00
6	41,987.00	6,000.00
7	47,452.00	0.00
8	60,196.13	0.00
9	52,054.11	5,000.00
10	44,745.10	15,100.00
11	28,806.00	20,000.00
12	46,894.00	20,000.00
13	28,842.00	18,800.00
14	108,690.00	32,525.00
15	43,678.00	14,000.00
16	46,341.00	13,000.00
17	61,023.00	9,000.00
18	68,923.00	2,200.00
19	25,529.00	5,000.00
20	28,536.00	6,500.00
TRACT "A"	120,808.00	2,842.00
TRACT "B"	31,886.00	0.732.00
TRACT "C"	8,107.00	2,326.00
TRACT "D"	5,526.00	2,113.00
TRACT "E"	1,876.00	2,043.00
TRACT "F"	87,685.00	2,013.00
Subdivision	1,307,084.00	211,362.00

* SLOPES GREATER THAN 10% GRADIENT - THE DISTURBANCE ALLOCATION INCLUDES ALL DISTURBANCE NECESSARY FOR THE DEVELOPMENT OF A LOT, INCLUDING DRAINWAYS, UTILITY LINES, HOUSE CONSTRUCTION, GRADING/DRAINAGE AND ANY OTHER CONSTRUCTION ACTIVITIES. THIS DISTURBANCE ALLOCATION ALSO INCLUDES ANY AREAS NEEDED TO BE DISTURBED, EVEN IF THOSE AREAS HAVE BEEN PREVIOUSLY DISTURBED THROUGH THE SUBDIVISION CONSTRUCTION PROCESS.

Scale: 1" = 200'

WESTCOAST VILLAGE
MOR BOOK 437, PAGE 30

FOUNTAIN HILLS RESORT
MOR BOOK 597, PAGE 43

LEGEND

STATE OF ARIZONA } S.S.
COUNTY OF MARICOPA }

ASSURED WATER SUPPLY

A CERTIFICATE OF ASSURED WATER SUPPLY AND LETTER ASSURING WATER SERVICE FOR THIS PROPERTY HAVE BEEN SUBMITTED TO THE TOWN OF FOUNTAIN HILLS FROM CHANDLER CITY WATER COMPANY.

OWNER

SHEA HILLS DEVELOPMENT LTD
815 HAROLD CRESCENT
THUNDER BAY, ONTARIO
CANADA P7B 6T6

DEVELOPER

VALHALLA HOMES
13771 FOUNTAIN HILLS BLVD
SUITE 114
P.M.B. 218
FOUNTAIN HILLS, AZ 85268
ATTN: ROBERT ZANETTE
(480) 263-1731

LEGAL DESCRIPTION

A part of the South half of Section 21 and a part of the North half of Section 28, all in Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of the Reservoir Site described in Document No. 850226260, records of Maricopa County, Arizona; Thence North 90 degrees 00 minutes 00 seconds East a distance of 600.00 feet; Thence North 00 degrees 00 minutes 00 seconds East a distance of 231.71 feet; Thence departing said Site, South 75 degrees 00 minutes 00 seconds East a distance of 1122.07 feet; Thence South 28 degrees 18 minutes 00 seconds East a distance of 455.59 feet to the northerly right of way line of Shea Boulevard; Thence South 84 degrees 55 minutes 47 seconds West along said line a distance of 2793.04 feet; Thence departing Shea Boulevard North 05 degrees 04 minutes 13 seconds West a distance of 1777.77 feet; Thence North 78 degrees 20 minutes 00 seconds East a distance of 744.82 feet; Thence North 24 degrees 00 minutes 00 seconds East a distance of 415.00 feet to the POINT OF BEGINNING;

EXCEPT: all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils, and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be particularly essential to the production of fissionable materials, whether or not of commercial value, in, on or under the Property; and

EXCEPT: all underground water in, under or flowing through the Property and water rights appurtenant thereto.

KEY MAP



LIENHOLDER RATIFICATION

STATE OF ARIZONA } S.S.
COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED AS BENEFICIARY OF THAT CERTAIN DEED OF TRUST RECORDED IN DET. NO. 850226260, RECORDS OF MARICOPA COUNTY RECORDER, MARICOPA COUNTY, ARIZONA, HEREBY RATIFIES, AFFIRMS, AND APPROVES THIS FINAL PLAT, AND EACH AND EVERY DETIGATION CONTAINED HEREIN.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE SIGNED THEIR NAMES THIS 18th DAY OF August, 2005.

SIGNED: *[Signature]*

BY: *[Signature]*

ITS: *[Signature]*

DATE: 8-18-05

LEGEND

- BRASS CAP IN HANDHOLE
- FOUND 1/2" REBAR
- BRASS CAP
- SET 1/2" REBAR w/ CAP No. 33853
- DRAINAGE EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT
- V.N.A.E. VEHICULAR NON-ACCESS EASEMENT
- S.E. SANITARY SEWER EASEMENT
- W.E. WALL EASEMENT
- S.W.E. SIDEWALK EASEMENT
- W.L.E. WATERLINE EASEMENT
- N.B.E. NO-BUILD EASEMENT
- V.S.E. VEHICULAR SIGHT EASEMENT
- S.L.E. SLOPE EASEMENT
- (M) MEASURED
- (R) RECORDED
- R.O.W. RIGHT OF WAY
- C.A.P. CENTRAL ARIZONA PROJECT
- C.C.W.C. CHANDLER CITY WATER COMPANY
- P.O.A. PROPERTY OWNER'S ASSOCIATION
- EASEMENT LINE
- ADJACENT PROPERTY LINES
- SETBACKS
- CENTER LINE
- BOUNDARY/LOT LINES

GENERAL NOTES

1. A PROPERTY OWNER'S ASSOCIATION (P.O.A.) SHALL BE FORMED AS A PART OF THIS SUBDIVISION AS REQUIRED BY MARICOPA COUNTY DOC. NO. 33853.
2. THE AREA OF THE SHEA BOULEVARD R.O.W. DISTURBED BY CONSTRUCTION THAT EXTENDS FROM THE BEGINNING OF THE ACCELERATION LANE TO THE END OF THE ACCELERATION LANE SHALL BE LANDSCAPED AND MAINTAINED BY THE PALATIAL ESTATES P.O.A.
3. ALL NECESSARY DISTURBANCE FOR INDIVIDUAL LOT DEVELOPMENT, SUCH AS DRIVEWAYS, UTILITY ETC., SHALL BE WITHIN THE ALLOTTED DISTURBANCE AREA FOR THE DEVELOPMENT AGREEMENT.
4. THIS PLAT IS LOCATED WITHIN C.C.W.C.'S SERVICE AREA AND HAS BEEN DESIGNATED AS A WATER SUPPLY.
5. THE PROPOSED SANITARY SEWER SYSTEM IS TO BE PUBLIC AND CONSTRUCTED PER THE FOUNTAIN HILLS DISTRICT'S FACILITIES DESIGN STANDARDS. LOTS 1 AND 2 WILL REQUIRE A SANITARY PUMP AND A PRIVATE LATERAL.
6. THE PROPOSED WATER SYSTEM IS TO BE PUBLIC AND CONSTRUCTED PER C.C.W.C.'S DESIGN AND CRITERIA.
7. PROPERTY OWNERS ARE HEREBY NOTIFIED THAT LOT TO LOT SURFACE DRAINAGE IS ANTICIPATED. CONSTRUCTION WITHIN P.U.E.'S IS LIMITED TO UTILITIES AND REMOVABLE TYPE FENCING.
8. TRAFFIC NOISE FROM SHEA BOULEVARD MAY EXCEED F.H.W.A. STANDARDS.
9. THE C.C.W.C. PLANT IS A 24 HOUR OPERATION WITH CONSTRUCTION AND MAINTENANCE TRAFFIC NOISE AND NIGHTTIME LIGHTING.
10. EACH LOT MUST DEDICATE TO THE TOWN OF FOUNTAIN HILLS A H.U.P.E. OVER A PORTION OF THE TOTAL DISTURBANCE ALLOWANCE AT THE TIME OF BUILDING PERMIT APPROVAL. OWNERS SHOULD CONSULT THE DEVELOPMENT AGREEMENT APPROVED FOR THIS SUBDIVISION FOR INFORMATION.
11. THE PROPERTY OWNER'S ASSOCIATION WILL DEDICATE PUBLIC UTILITY EASEMENTS OVER LOT TRACT B AT SOME FUTURE TIME WHEN THE TOWN OF FOUNTAIN HILLS DETERMINES THAT SUCH ARE NECESSARY FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC UTILITIES, INCLUDING, BUT NOT LIMITED TO, SANITARY SEWER.

LOCATION MAP



HILLSIDE EASEMENT

Owner hereby grants to the Town of Fountain Hills easement upon, across, over and under all those areas designated as "HILLSIDE PROTECTION EASEMENT" for the purpose of preserving the natural topography and vegetation of the area within LOTS 1-19 of the Final plat of PALATIAL ESTATES in conformance with the Article V of the Town of Fountain Hills Subdivision Regulations. The owner or any of his heirs, successors, or assigns shall not perform nor allow to be performed, any construction or grading, filling, grading, topography, nor any grubbing, brushing, removal, or damage any vegetation, rock outcropping, or other feature in the Hillside Protection Easement area without the written approval of the Town Council. A liability may be permitted approved by the Town Council.

NOTARY ACKNOWLEDGMENT:

STATE OF ARIZONA } S.S.
COUNTY OF MARICOPA }

ON THIS 18th DAY OF August, 2005, BEFORE ME, THE UNDERSIGNED OFFICER,

[Signature] PERSONALLY APPEARED WHO ACKNOWLEDGED HIM/HERSELF TO BE AN OFFICER OF SAID LIENHOLDER AND THAT AS SUCH OFFICER BEING AUTHORIZED SO TO DO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES CONTAINED BY SHOWING THE NAMES OF THE LIENHOLDER, BY HIM/HERSELF, AS SUCH OFFICER.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL

BY: *[Signature]*

DATE: 8-18-05

SURVEYOR'S CERTIFICATION

THIS IS TO CERTIFY THE SURVEY AND SUBDIVISION PRESENTED ON THIS PLATTED HEREON WERE MADE UNDER MY DIRECTION, SUPERVISION, MONTH OF AUGUST, 2004, THAT THE PLAT IS CORRECT AND THE MONUMENTS SHOWN HEREON HAVE BEEN LOCATED OR DESCRIBED AND THAT LOT CORNERS HAVE BEEN PERMANENTLY MARKED.

LLOYD E. PEK, RLS 33866

HANDEN THORP PELLERIN OLSON INC.
13229 N. VERDE RIVER DR., SUITE 300
FOUNTAIN HILLS, AZ 85268
(480) 836-0035

HTPO Engineers - Surveyors
HTPO, INC.
13229 N. Verde River Drive
Suite 300
Fountain Hills, AZ 85268
(480) 836-0035
Fax (480) 836-0575

Project No. ABB-043C
Drawn by: SAB
Check by: M/A
Designed by: LEP
Date: 8-18-05

CALL THE NUMBER ABOVE
BEFORE YOU CALL
FOR THE BLUEPRINTS
263-1100
ALL BLUEPRINTS
ONLY PROJECT

PALATIAL ESTATES
FOUNTAIN HILLS, ARIZONA

COVER SHEET

1 of 1

FINAL PLAT OF PALATIAL ESTATES

BEING A PORTION OF SECTIONS 21 AND 28, T 3 N, R 6 E,
GILA & SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA
FOUNTAIN HILLS, ARIZONA

SITE DATA

LOT	AREA (sq. ft.)	(acres)	* TOTAL DISTURBANCE ALLOWANCE (sq. ft.)
1	77,367	1.776	17,800
2	43,575	1.000	18,000
3	40,170	0.920	12,000
4	23,082	0.530	8,000
5	21,027	0.481	6,000
6	47,182	1.083	0
7	60,198	1.382	0
8	82,084	1.895	5,000
9	44,785	1.028	10,100
10	36,909	0.844	20,000
11	40,954	0.940	20,000
12	38,042	0.869	18,000
13	108,940	2.505	24,000
14	43,878	1.003	14,000
15	46,241	1.062	13,000
16	61,023	1.401	9,000
17	96,923	2.225	2,500
18	26,529	0.606	5,000
19	28,536	0.655	8,500
Tract "A"	104,882	2.408	-
Tract "B"	123,808	2.842	-
Tract "C"	31,865	0.732	-
Tract "D"	9,107	0.209	-
Tract "E"	8,529	0.197	-
Tract "F"	1,876	0.043	-
Tract "G"	87,665	2.013	-
Subdivision	1,307,084	30.007	211,382

Lot 4

Area = 23,082 sq. ft.

Total Disturbance Allowance = 5,000 sq. ft.

* SLOPES GREATER THAN 10% GRADIENT - THE DISTURBANCE ALLOCATION INCLUDES ALL DISTURBANCE NECESSARY FOR THE DEVELOPMENT OF A LOT, INCLUDING DRIVEWAYS, UTILITY LINES, HOUSE CONSTRUCTION, GRADING/DRAINAGE AND ANY OTHER CONSTRUCTION ACTIVITIES. THIS DISTURBANCE ALLOCATION ALSO INCLUDES ANY AREAS NEEDED TO BE DISTURBED, EVEN IF THOSE AREAS HAVE BEEN PREVIOUSLY DISTURBED THROUGH THE SUBDIVISION CONSTRUCTION PROCESS.

Scale in feet
0 200 400 600
SCALE: 1" = 200'

WESTRIDGE VILLAGE
MCR BOOK 437, PAGE 30

FOUNTAIN HILLS RESORT
MCR BOOK 597, PAGE 42

LEGAL DESCRIPTION

A part of the South half of Section 21 and a part of the North half of Section 28, all in Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of the Reservoir Site described in Document No. 850226260, records of Maricopa County, Arizona; Thence North 90 degrees 00 minutes 00 seconds East a distance of 600.00 feet; Thence North 00 degrees 00 minutes 00 seconds East a distance of 231.71 feet; Thence departing said Site, South 75 degrees 00 minutes 00 seconds East a distance of 1122.07 feet; Thence South 28 degrees 16 minutes 00 seconds East a distance of 455.59 feet to the northerly right of way line of Shea Boulevard; Thence South 84 degrees 55 minutes 47 seconds West along said line a distance of 2793.04 feet; Thence departing Shea Boulevard North 05 degrees 04 minutes 13 seconds West a distance of 177.77 feet; Thence North 78 degrees 20 minutes 00 seconds East a distance of 744.82 feet; Thence North 24 degrees 00 minutes 00 seconds East a distance of 415.00 feet to the POINT OF BEGINNING;

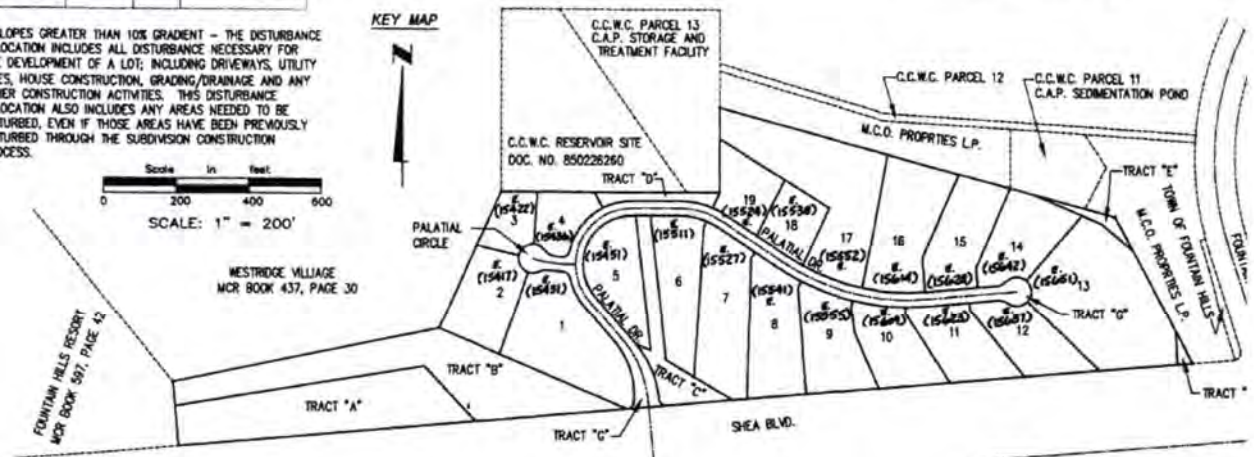
EXCEPT all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils, and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be particularly essential to the production of fissionable materials, whether or not of commercial value, in, on or under the Property, and

EXCEPT all underground water in, under or flowing through the Property and water rights appurtenant thereto.

LEGEND

- BRASS CAP IN HANDHOLE
- FOUND 1/2" REBAR
- BRASS CAP
- SET 1/2" REBAR w/CAP No. 33053
- DRAINAGE EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT
- V.N.A.E. VEHICULAR NON-ACCESS EASEMENT
- S.E. SANITARY SEWER EASEMENT
- W.E. WALL EASEMENT
- S.W.E. SIDEWALK EASEMENT
- W.L.E. WATERLINE EASEMENT
- N.B.E. NO-BUILD EASEMENT
- V.S.E. VEHICULAR SIGHT EASEMENT
- S.L.E. SLOPE EASEMENT
- (M) MEASURED
- (R) RECORDED
- R.O.W. RIGHT OF WAY
- C.A.P. CENTRAL ARIZONA PROJECT
- C.G.W.C. CHAPARRAL CITY WATER COMPANY
- P.O.A. PROPERTY OWNER'S ASSOCIATION
- EASEMENT LINE
- ADJACENT PROPERTY LINES
- SETBACKS
- CENTER LINE
- BOUNDARY/LOT LINES

KEY MAP



Randy Harrel

From: Randy Harrel
Sent: Monday, April 30, 2018 4:04 PM
To: Marissa Moore
Cc: Robert 'Bob' Rodgers
Subject: HPE Abandonment - 15436 Palatial Drive

Marissa,

Engineering has no objection to this proposed HPE abandonment.

This somewhat odd-shaped lot has two curving street frontages, with steeply graded slopes down to the adjacent streets. It additionally has platted easements along all four sides. The majority of the non-hillside area on the lot lies within the rear (northerly) easement area (a 20' Sewer Easement, as well as being within the 25' rear setback distance). And, the platted Total Disturbance Allowance for this lot is only 5,000 sf, the 4th smallest allowance in this subdivision. So, it's questionable whether a reasonable sized house (and conforming to this subdivision CC&R's) is currently feasible on this lot.

This lot drains to developed streets, with developed swales and storm drain outlets. The small amount of potential additional disturbance on this lot should create only minimal additional drainage flow above that which had originally been calculated, and not be a significant issue for those existing drainage facilities.

We're not aware of any other potential issues with allowing an increase in the platted "Total Disturbance Allowance" for this lot.

Randy



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Community Services

Staff Contact Information: Rachael Goodwin, Community Service Director, 480-816-5135

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF adopting Ordinance 19-05 amending Fountain Hills Town Code Article 9-5 Section 9-5-2 Definitions (E) to reflect the recent acquisition of additional Preserve land.

Applicant:

Applicant Contact Information:

Owner:

Owner Contact Information:

Property Location:

Related Ordinance, Policy or Guiding Principle: Town Code Article 9-5 Section 9-5-2 Definitions (E) Resolution 2002-01 Resolution 2018-56

Staff Summary (background): The current Town Code, Article 9-5-2 Definitions (E) reflects the definition of "Preserve" as the lands identified in Resolution 2002-01. This Resolution has now been superseded by Resolution 2018-56 which states "WHEREAS, the real and personal property described by this resolution will add 82 acres of additional open space lands or open areas to the Fountain Hills McDowell Mountain Preserve." PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills on the 6th day of November 2018. This updated Resolution accounts for 82 additional acres of preserve space that was deeded to the Town in 2018.

Risk Analysis (options or alternatives with implications):

Fiscal Impact (initial and ongoing costs; budget status):

Budget Reference (page number):

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): The McDowell Mountain Preservation Commission recommends the Town Code include the recently acquired 82 acres from Toll Brothers.

Staff Recommendation(s): Rachael Goodwin, Community Services Director

List Attachment(s): Ordinance 19-05, Fountain Hills Town Code Article 9-5, Resolution 2018-56

SUGGESTED MOTION (for Council use): Move to Adopt Ordinance 19-05.

Prepared by:


Angela Padgett-Espiritu, Executive Assistant

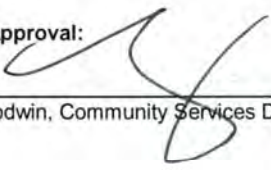
2/27/2019

Approved:


Grady E. Miller, Town Manager

Date

Director's Approval:


Rachael Goodwin, Community Services Director

2/27/2019

ORDINANCE 19-05

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING ARTICLE 9-5, *MCDOWELL MOUNTAIN PRESERVE*, SECTION 9-5-2, *DEFINITIONS*, OF THE FOUNTAIN HILLS TOWN CODE

RECITALS:

WHEREAS, on November 6, 2018, 82 additional acres of open space lands were added to the Fountain Hills McDowell Mountain Preserve through the adoption of Resolution 2018-56 and the Town Council wishes to reflect said addition in the Town Code.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Town of Fountain Hills, Arizona that Section Article 9-5, *McDowell Mountain Preserve*, is hereby amended as follows:

Section 9-5-2. Definitions

- A. "Camping" means any effort to erect a tent or shelter, sleeping, use of a sleeping bag, or the parking of a trailer or camper for the purpose of sleeping or remaining overnight.
- B. "Central Trailhead" means the developed portions of that trailhead located at the terminus of Eagle Ridge Drive.
- C. "Emergency Access Route" means that roadway between the central trailhead and the southwestern corner of the Eagles Nest subdivision that can be used to evacuate people out of the Eagle Ridge North subdivision. Fountain Hills Town Code Page 11 of 15
- D. "Golden Eagle Trailhead" means the developed portions of that trailhead located at the public terminus of Golden Eagle Drive.
- E. The "Preserve" shall mean those lands identified by ResolutionS 2002-01 **AND 2018-56** as the Fountain Hills McDowell Mountain Preserve.
- F. "Special Preserve Permit" means a noncommercial permit issued by the Parks and Recreation Department required for group functions in and around the Central Trailhead.
- G. "Spider Trail" means an unauthorized trail or pathway within the Preserve.
- H. "Trail" means an authorized pathway within the Preserve.
- I. "Violation" means any act that violates any of the rules or regulations contained within this Article, punishable as specified in Section 9-5-7 herein.

ENACTMENTS:

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, this 19th day of March, 2019.

FOR THE TOWN OF FOUNTAIN HILLS:**ATTESTED TO:**

Ginny Dickey, Mayor

Elizabeth A. Burke, Town Clerk**REVIEWED BY:****APPROVED AS TO FORM:**

Grady E. Miller, Town Manager

Aaron D. Arnson, Town Attorney

RESOLUTION 2018-56

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING A PUBLIC NEED AND NECESSITY AND A PUBLIC PURPOSE; AUTHORIZING AND DIRECTING THE TOWN MANAGER, TOWN ATTORNEY AND TOWN CLERK TO TAKE ANY AND ALL ACTION NECESSARY AND TO SIGN ANY AND ALL DOCUMENTS, AND TO PAY ANY AND ALL COSTS OR FEES IN ORDER TO ACQUIRE REAL AND PERSONAL PROPERTY THROUGH GIFT; IDENTIFYING THE REAL AND PERSONAL PROPERTY AS OPEN SPACE OR OPEN AREAS; AND DECLARING AN EMERGENCY

RECITALS:

WHEREAS, beginning in August 1998, the Mayor and Council of the Town of Fountain Hills have adopted numerous Resolutions authorizing the acquisition of real property totaling approximately 740 acres for the purposes of open space lands or open areas within the Fountain Hills McDowell Mountain Preserve; and

WHEREAS, the real and personal property described by this resolution will add approximately 82 acres of additional open space lands or open areas to the Fountain Hills McDowell Mountain Preserve.

ENACTMENTS:

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AS FOLLOWS:

Section 1. That A.R.S. § 9-464 and A.R.S. § 464.01 define open space lands or open areas as areas characterized by great natural scenic beauty, or whose existing openness, natural condition or present state of the use would maintain or enhance the conservation of natural or scenic resources, and that the acquisition of interest in said lands is a public purpose for which public funds may be expended or advanced.

Section 2. That the Town has identified a certain parcel of real property identified according to the replat of record in the office of the Maricopa County Recorder in Book 1220 of Maps, Page 28, as Adero Canyon, Parcel 9 and located in Section 6 of Township 3 North, Range 6 East, Gila & Salt River Base & Meridian, Maricopa County Arizona. Said parcel being approximately 82 acres in size and needed for the purpose of connecting to other parcels, either already acquired by the Town or in the process of acquisition by the Town, for open space conservation by the Town. An approximate legal description of the 82 acres is attached as Exhibit A to this Resolution and a map depicting the 82 acres is attached as Exhibit B to this Resolution.

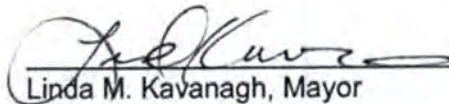
Section 3. That the use of said real property for open space is a public use and in the best interests of the citizens of Fountain Hills.

Section 4. That the Town Manager, Town Clerk, and Town Attorney are hereby authorized and directed to acquire said real property by gift, and to do all acts and to sign all documents and pay all costs necessary to acquire said real property.

Section 5. That the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health, safety and welfare of the citizens in that savings of time and expense are currently available to both the Town and property owners, and that the Council therefore declares an emergency to exist, and that this Resolution shall be in full force and effect from and after its passage by the Council, as required by law.

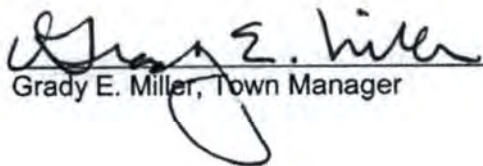
PASSED AND ADOPTED by the Mayor and Town Council of the Town of Fountain Hills, Arizona this 6th day of November, 2018.

FOR THE TOWN OF FOUNTAIN HILLS: ATTESTED TO:


Linda M. Kavanagh, Mayor


Elizabeth A. Burke, Town Clerk

REVIEWED BY:


Grady E. Miller, Town Manager

APPROVED AS TO FORM:

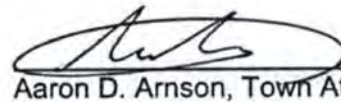

Aaron D. Arnson, Town Attorney

Exhibit A

PARCEL ACQUISITION

FINAL PLAT FOR ADERO CANYON, PARCEL 9

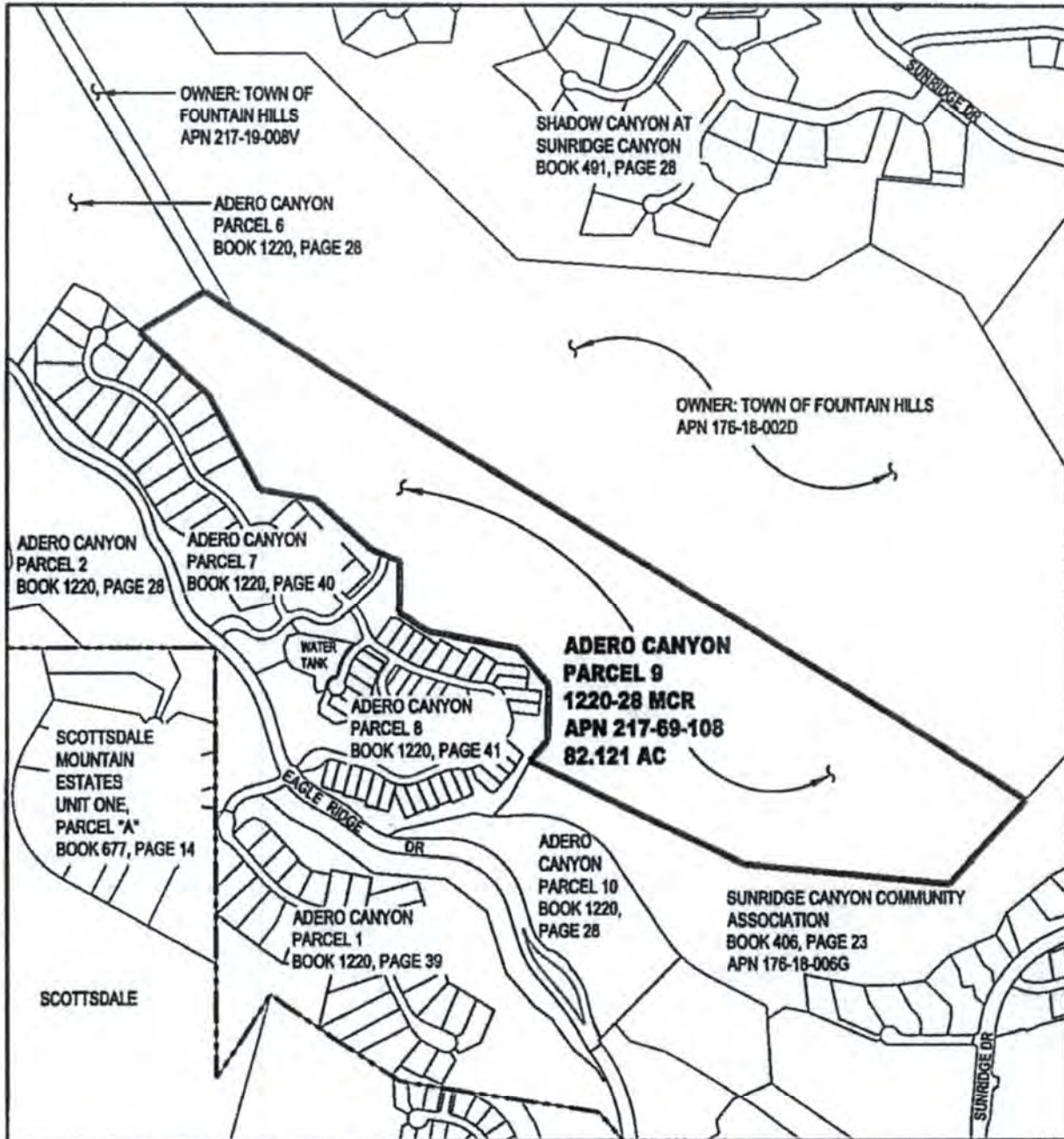
LEGAL DESCRIPTION

Parcel 9 of Final Plat for Adero Canyon, Fountain Hills, Arizona, Book 1220 of Maps, Page 28, Official Records of Maricopa County, recorded on March 4, 2015, located in portions of Sections 7, 8 & 17, Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

This parcel contains an area of 82.121 acres, more or less.

**TOWN OF FOUNTAIN HILLS
PARCEL ACQUISITION
EXHIBIT "B"**

ADERO CANYON PARCEL 9, BOOK 1220, PAGE 28 MCR



0 200' 400' 800'
SCALE: 1"= 300'
DATE: 9-17-2018

MAP BASED ON FINAL PLAT FOR
ADERO CANYON REPLAT, FOUNTAIN
HILLS, AZ, BOOK 1220, PAGE 28 MCR

Article 9-5

FOUNTAIN HILLS MCDOWELL MOUNTAIN PRESERVE

Sections:

- 9-5-1 Purpose and Intent**
- 9-5-2 Definitions**
- 9-5-3 General Preserve Regulations**
- 9-5-4 Central Trailhead Regulations**
- 9-5-5 Golden Eagle Trailhead Regulations**
- 9-5-6 Trailhead and Trail Development**
- 9-5-7 Penalties**
- 9-5-8 Severability**

Section 9-5-1 Purpose and Intent

The Fountain Hills McDowell Mountain Preserve ("the Preserve") encompasses a scenic area of mountainous, pristine land within Fountain Hills that will be preserved in its natural state for the benefit of this and future generations. In order for the Town to achieve tandem goals of providing trails and trailhead locations to facilitate public access into the Preserve and to safeguard the Preserve for this and future generations, a thorough set of Preserve, trailhead and trails regulations are needed. These regulations are specifically intended to accomplish the following:

- A. Maintain the existing undisturbed, desert environment of the Preserve.
- B. Provide for Preserve use regulations that will maintain wildlife habitat and limit human encroachment to specific areas within the Preserve.
- C. Provide use regulations for the Central Trailhead that will provide public access into the Preserve.
- D. Provide use regulations for the Golden Eagle Trailhead, including access control into the Preserve through McDowell Mountain Park.
- E. Provide for the development of a trail system within the Preserve and connectivity to abutting trail systems in the City of Scottsdale and within McDowell Mountain Park.

(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-2 Definitions

- A. "Camping" means any effort to erect a tent or shelter, sleeping, use of a sleeping bag, or the parking of a trailer or camper for the purpose of sleeping or remaining overnight.
- B. "Central Trailhead" means the developed portions of that trailhead located at the terminus of Eagle Ridge Drive.
- C. "Emergency Access Route" means that roadway between the central trailhead and the southwestern corner of the Eagles Nest subdivision that can be used to evacuate people out of the Eagle Ridge North subdivision.

Fountain Hills Town Code

- D. "Golden Eagle Trailhead" means the developed portions of that trailhead located at the public terminus of Golden Eagle Drive.
- E. The "Preserve" shall mean those lands identified by Resolution 2002-01 as the Fountain Hills McDowell Mountain Preserve
- F. "Special Preserve Permit" means a noncommercial permit issued by the Parks and Recreation Department required for group functions in and around the Central Trailhead.
- G. "Spider Trail" means an unauthorized trail or pathway within the Preserve.
- H. "Trail" means an authorized pathway within the Preserve.
- I. "Violation" means any act that violates any of the rules or regulations contained within this Article, punishable as specified in Section 9-5-7 herein.
(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-3 General Preserve Regulations

The following are prohibited within the Preserve:

- A. Accessing the Preserve by leaving a trail or trailhead. All Preserve visitors shall stay on authorized trails and within trailheads, unless approved by the Director of Community Development.
- B. Accessing the Preserve outside of the posted hours of operation, unless approved by the Director of Community Development.
- C. Alcoholic beverages.
- D. Camping.
- E. Carrying or using any type of glass or ceramic container.
- F. Creating, developing or using any type of spider trail.
- G. Destroying any barriers, signs, or other Town property.
- H. Destroying, damaging or removing any vegetative or mineral resource, including but not limited to any tree, shrub, wildflower, cactus or rock outcropping.
- I. Dogs are prohibited unless on a 6-foot maximum leash at all times, and must remain on trails.
- J. Horses.
- K. Hunting, trapping or otherwise harming or harassing any wildlife.
- L. Littering or depositing garbage, trash, refuse or other obnoxious material anywhere other than in specific Town-provided containers provided for that purpose..

Fountain Hills Town Code

- M. Setting or igniting any type of fire.
- N. Smoking.
- O. Throwing rocks or other objects into washes, including but not limited to up or down hillsides and on or off trails.
- P. Using any vehicle, including motorized vehicles and bicycles, except authorized maintenance vehicles and during emergency evacuations along the Emergency Access Route as directed by emergency personnel.
- Q. Using or discharging any firearm, bow and arrow, slingshot or other weapon.
(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-4 Central Trailhead Regulations

In addition to the prohibitions in Section 9-5-3, the following are prohibited within the Central Trailhead:

- A. Accessing or utilizing the Central Trailhead outside of the posted hours of operation.
- B. Alcoholic beverages, unless as approved by Special Preserve Permit.
- C. Groups of 20 or more people without a Special Preserve Permit, to ensure adequate available parking.
- D. Horses or horse trailers.
- E. Parking vehicles outside of designated parking spaces.
- F. Parking vehicles in the school bus parking spaces, except on weekends. School buses may utilize these parking spaces with prior Town approval.
- G. Use of a covered ramada that has been reserved by others, through a Special Preserve Permit.
- H. Vehicles longer than 19 feet.

(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-5 Golden Eagle Trailhead Regulations

The Golden Eagle Trailhead is a public parking area to provide a primary point for access into the southwestern portion of McDowell Mountain Park from the Town of Fountain Hills. It may also be possible to access the Preserve, through McDowell Mountain Park, from the Golden Eagle Trailhead. All users of the Golden Eagle Trailhead will be directed along public access easements through a private subdivision to gain access to McDowell Mountain Park. All users of McDowell Mountain Park shall abide by those rules and regulations established by Maricopa County for McDowell Mountain Park. In addition to the prohibitions in Section 9-5-3, the following are prohibited within the Golden Eagle Trailhead:

Fountain Hills Town Code

- A. Accessing or utilizing the Golden Eagle Trailhead outside of the posted hours of operation.
- B. Although bicycles may be permitted within McDowell Mountain Park, bicycles are not permitted in the Preserve, even if accessed from the north through McDowell Mountain Park. Bicycles are permitted within the trailhead and the public access easement(s) and into McDowell Mountain Park, if permitted by McDowell Mountain Park rules.
- C. Horses or horse trailers.
- D. Vehicles longer than 19 feet.
(Ordinance 01-23, Added, 01/17/2002)

Section 9-5-6 Trailhead and Trail Development

The McDowell Mountain Preserve Commission will be responsible for the design of any trailhead and the development of any trails within the Preserve.
(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-7 Penalties

The Rules and Regulations contained in Article 9-5 will be considered petty offenses and/or Class 1 Misdemeanors as specified under subsections A through C below:

- A. Violations of the rules and regulations contained in subsections 9-5-3 (A, B, C, E, F, I, J, L, N and O) and Sections 9-5-4 and 9-5-5 shall be considered a petty offense if the offender has not been convicted of the same infraction within the last twenty-four (24) months. Petty offenses shall be punishable by a fine of up to one hundred dollars (\$100.00).
- B. Subsequent conviction(s) of the same subsections 9-5-3 (A, B, C, E, F, I, J, L, N and O) and Sections 9-5-4 and 9-5-5 within a twenty-four (24) month period shall be considered a Class 3 Misdemeanor, and will be punishable as such under State Law.
- C. Violations of the rules and regulations contained in subsections 9-5-3 (D, G, H, K, M, P and Q) of this section shall be considered a Class 1 Misdemeanor and will be punishable as such under State Law.

(Ordinance 2002-01, Added, 01/17/2002)

Section 9-5-8 Severability

Should any section of this Article be determined to be void, unlawful or of no effect, the remaining sections shall continue to be fully applicable and shall be deemed to be in full force and effect.

(Ordinance 2002-01, Added, 01/17/2002)

Article 9-6

RESTRICTIONS ON SMOKING IN PUBLIC PARKS, PRESERVES, AND TRAILS

Sections:

- 9-6-1 Purpose and Intent**
- 9-6-2 Restrictions**
- 9-6-3 Definitions**
- 9-6-4 Order to leave; unlawful failure to comply**

Section 9-6-1 Purpose and Intent

Town owned parks, preserves, and trails provide recreational opportunities and enhance the quality of life of the Town residents and visitors. The purpose of this Article is to protect the recreational environment and improve the public health of all citizens and visitors by prohibiting smoking in parks, preserves and trails.

(18-08, Added, 06/19/2018)

Section 9-6-2 Restrictions

- A. No person shall smoke in a park, mountain preserve area, or on Town owned or operated trails, where one or more signs are posted prohibiting such activity.
- B. The Director of Parks and Recreation is authorized to post signs prohibiting smoking in parks, mountain preserve areas, and Town owned or operated trails.
- C. The Director of Parks and Recreation is authorized to post signs designating areas where smoking is permitted.

(18-08, Amended, 06/19/2018)

Section 9-6-3 Definitions

- A. "Smoke" or "smoking" means and includes:
 - 1. The burning of any tobacco or other plant product;
 - 2. Placing a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air;
 - 3. The use of electronic devices that produce an aerosol by heating a liquid, instead of burning a plant product, commonly referred to as "e-cigs", "vapes", "vape pens", "tank systems", and "mods".

(18-08, Added, 06/19/2018)

Section 9-6-4 Order to leave; unlawful failure to comply

Fountain Hills Town Code

- A. The Director of Parks and Recreation, or any designee, may order any person who has failed to comply with the requirements of this section to immediately leave the park, preserve, or trail system in which the violation occurred. No person may remain in a park, preserve, or trail system or return to such location on the same day after such person has been ordered to leave.
- B. Any person who fails to comply with an order to leave the park, preserve, or trail system shall be responsible for a petty offense, punishable by:
 - 1. A fine not exceeding \$100 for a first violation;
 - 2. A fine not exceeding \$200 for a second violation;
 - 3. A fine not exceeding \$300 for a third violation;
 - 4. Any person who violates this section four or more times in any 24 month period may be charged with and found guilty of a class 1 misdemeanor.

(18-08, Added, 06/19/2018)

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL
AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Community Services

Staff Contact Information: Rachael Goodwin, Community Services Director, 480-816-5135

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF approving a GRANT APPLICATION REQUEST to apply for the Kompan playground matching funds grant (\$50,000)

Applicant:**Applicant Contact Information:****Owner:****Owner Contact Information:****Property Location:****Related Ordinance, Policy or Guiding Principle:** Town of Fountain Hills Grant Policy

Staff Summary (background): Kompan Playgrounds is offering five matching grants, up to \$50,000, for playground equipment purchases between May 1 and December 31, 2019. The grant requires an application and 200 word description of vision for the play space as well as supporting documentation. Staff looks to apply for this grant in an effort to increase funding options for the redevelopment of Four Peaks Park. The matching funds for this grant, if received, would be sourced from the CIP allocation for this park project.

Risk Analysis (options or alternatives with implications):**Fiscal Impact** (initial and ongoing costs; budget status): \$50,000, matching funds**Budget Reference** (page number):**Funding Source:** Capital Projects Fund

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: No**Recommendation(s) by Board(s) or Commission(s):****Staff Recommendation(s):** Staff recommends applying for grant funds**List Attachment(s):**

SUGGESTED MOTION (for Council use): Move to approve a GRANT APPLICATION REQUEST to apply for the Kompan playground matching funds grant (\$50,000)

Prepared by:

NA 12/18/2018

Director's Approval:

Rachael Goodwin, Community Services Director 3/6/2019

Approved:


Grady E. Miller, Town Manager 3/6/2019



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular

Agenda Type: Regular

Submitting Department: Administration

Staff Contact Information: Elizabeth A. Burke, Town Clerk, 480-816-5115; eburke@fh.az.gov

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF adopting Resolution No. 2019-22 amending the Bylaws of the McDowell Mountain Preservation Commission

Applicant: NA

Applicant Contact Information: NA

Owner: N/A

Owner Contact Information: NA

Property Location: NA

Related Ordinance, Policy or Guiding Principle: A.R.S. §38-431.01

Staff Summary (background): This item is being placed on the agenda as directed by the Town Council at the 02/19/2019 Regular Meeting to amend the Bylaws of the McDowell Mountain Preservation Commission to allow for the appointment of eight members, rather than the current seven, and to allow for up to two members to be emeritus members. These changes are proposed with the understanding that in the near future a set of ordinances will be brought back to Council to place in Town Code the creation and authority of the Town's boards and commissions, including the MMPC, so changes may be made at that time. Such action is in response to discussion held at the Council's Retreat to formalize each of the boards of commissions and bring consistency and further transparency to them.

Risk Analysis (options or alternatives with implications): NA

Fiscal Impact (initial and ongoing costs; budget status): NA

Budget Reference (page number): NA

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

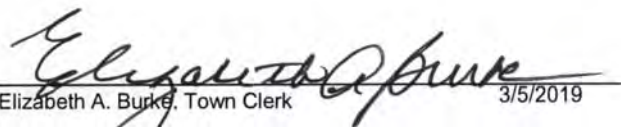
Recommendation(s) by Board(s) or Commission(s): NA

Staff Recommendation(s): Approve

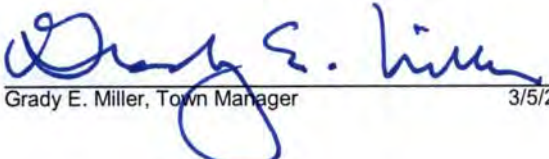
List Attachment(s): Resolution No. 2019-22

SUGGESTED MOTION (for Council use): MOVE to adopt Resolution No. 2019-22, amending the Bylaws of the McDowell Mountain Preservation Commission.

Prepared by:


Elizabeth A. Burke, Town Clerk 3/5/2019

Approved:


Grady E. Miller, Town Manager 3/5/2019

RESOLUTION NO. 2019-22

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, CONTINUING THE MCDOWELL MOUNTAIN PRESERVE COMMISSION, A COMMISSION APPOINTED BY THE COUNCIL, AND ADOPTING AMENDED BYLAWS FOR ITS GOVERNANCE

RECITALS:

WHEREAS, it is the desire of the Mayor and Town Council to increase the number of members of the McDowell Mountain Preservation Commission (the "MMPC") from seven to eight and to permit the title of emeritus for up to two members of the MMPC; and

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS AS FOLLOWS:

SECTION 1. The Amended Bylaws for the MMPC are hereby approved in the form attached hereto as Exhibit A and incorporated herein by reference.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, this 19th day of March, 2019.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

Ginny Dickey, Mayor

Elizabeth A. Burke, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Grady E. Miller, Town Manager

Aaron D. Arnson, Town Attorney

EXHIBIT A**MCDOWELL MOUNTAIN PRESERVATION COMMISSION
AMENDED BYLAWS****I. Established**

There shall be a McDowell Mountain Preservation Commission (the "MMPC") for the Town, which shall consist of ~~seven~~ **EIGHT** members, **UP TO TWO OF WHICH MAY BE EMERITUS MEMBERS.**

II. Powers and Duties

The MMPC shall have the powers and duties to:

- A. Act in advisory capacity to the Town Council and Town Manager in all matters pertaining to the McDowell Mountain Preservation.
- B. Act as liaison between the Town Council and the Sonoran Conservancy.
- C. Consider provisions of the Town's annual budget for the MMPC purposes during the process of the preparation of the budget and make recommendations with respect thereto to the Community Services Director.
- D. Assist in the planning of programs for the citizens of the Town; promote and stimulate public interest in the McDowell Mountain Preserve.
- E. Advise the Community Services Director with respect to the acceptance of money, personal property or real estate donated or offered to the Town for McDowell Mountain preservation purposes.
- F. Perform such other duties not inconsistent with these Bylaws as may be requested by the Town Council.

III. Membership

- A. Appointments to the MMPC shall be made by the Town Council from among residents of the Town. Appointees shall be **registered-voters QUALIFIED ELECTORS** within the Town and eighteen years of age or older.
- B. **MEMBER TERMS** shall be for a term of three years, **WITH TERMS TO BE STAGGERED.** ~~However, the terms of the seven members shall be staggered between two and three years. Members appointed shall so classify themselves by agreement or lot so that each succeeding January 1, the above guidelines are followed.~~

- C. Three successive unexcused or unexplained absences from any regular or special meeting shall be grounds for removal at the will and pleasure of the Town Council, without the necessity of a hearing or notice, and such action shall be final.

IV. Organization; Meetings

- A. As soon as practicable following the first day of January of each year, the MMPC shall organize by electing one of its members to serve as the presiding officer at the pleasure of the MMPC. The MMPC may appoint other offices (e.g., vice chair, secretary, etc.) as may be required. The presiding officer shall serve in that position for one year and may be re-elected by the MMPC.
- B. The affirmative vote of a majority of the MMPC shall be necessary for it to take any action except to adjourn.

V. Compensation

The members of the MMPC shall serve without compensation for their services as such but may receive reimbursement for necessary travel and other expenses incurred on official duty with appropriate prior authorization.

VI. Removal from Office; Filing of Vacancies

- A. The Town Council may remove any member of the MMPC from office at any time.
- B. Any vacancies in the MMPC, from whatever cause arising, shall be filled by appointment by the Mayor and Town Council. Upon a vacancy occurring, leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of said term.

VII. Ex-Officio Members

The Mayor, with the consent of the Town Council, may from time to time appoint ex-officio members to the MMPC. Such members shall serve at the pleasure of the Mayor and Town Council. Ex-officio members shall not be entitled to vote on any matter brought before the MMPC.

VII. EMERITUS MEMBERS

THE MAYOR, WITH THE CONSENT OF THE TOWN COUNCIL, MAY FROM TIME TO TIME DESIGNATE UP TO TWO MEMBERS OF THE MMPC AS EMERITUS MEMBERS. THE TITLE OF EMERITUS SHALL BE AN HONORARY TITLE GIVEN TO RECOGNIZE A MEMBER'S LONGEVITY OF SERVICE ON THE MMPC AND SHALL NEITHER ENLARGE NOR DIMINISH THE DUTIES AND RESPONSIBILITIES OF ANY MEMBER HOLDING SUCH TITLE.



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular

Agenda Type: Regular

Submitting Department: Administration

Staff Contact Information: Elizabeth A. Burke, Town Clerk, 480-816-5115; eburke@fh.az.gov

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF appointment of an additional member to the McDowell Mountain Preservation Commission and designation of Emeritus member(s)

Applicant: NA

Applicant Contact Information: NA

Owner: N/A

Owner Contact Information: NA

Property Location: NA

Related Ordinance, Policy or Guiding Principle: A.R.S. §38-431.01

Staff Summary (background): At the February 19, 2019, Regular Council Meeting, staff was directed to bring back a resolution to amend the Bylaws of the McDowell Mountain Preservation Commission to allow for one more member to be appointed to the commission and provide for emeritus members. This is being done through the prior agenda item. If approved, an additional member may be appointed to serve on the McDowell Mountain Preservation Commission and up to two members of the commission may be designated as Emeritus Members. This item has been placed on the agenda to allow that action to take place should the Council desire to do so.

Risk Analysis (options or alternatives with implications): NA

Fiscal Impact (initial and ongoing costs; budget status): NA

Budget Reference (page number): NA

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): NA

Staff Recommendation(s): Approve

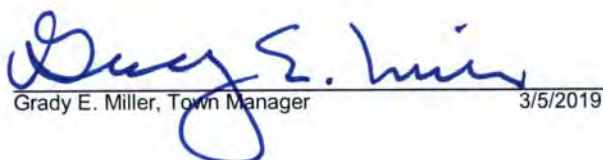
List Attachment(s): Click or tap here to enter text.

SUGGESTED MOTION (for Council use): MOVE to appoint _____ to the McDowell Mountain Preservation Commission and possibly designate _____ and _____ as an emeritus member.

Prepared by:

Approved:


Elizabeth A. Burke, Town Clerk 3/5/2019


Grady E. Miller, Town Manager 3/5/2019



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Regular

Submitting Department: Administration

Staff Contact Information: Grady E. Miller, Town Manager

REQUEST TO COUNCIL (Agenda Language): DISCUSSION WITH POSSIBLE DIRECTION TO STAFF Regarding the Reprioritization of the Tasks in the 2017 Strategic Plan.

Applicant: N/A

Applicant Contact Information: N/A

Owner: N/A

Owner Contact Information: N/A

Property Location: N/A

Related Ordinance, Policy or Guiding Principle: 2017 Strategic Plan

Staff Summary (background): At the Town Council Retreat on February 7, 2019, the Town Council reviewed the reprioritization of the 2017 Strategic Plan. The Strategic Planning Advisory Commission has requested the Town Council to take action in considering, modifying, and approving the priorities as recommended by the Commission. Before the reprioritization of the 2017 Strategic Plan took place, the Strategic Planning Advisory Commission went through an interactive exercise to reprioritize the tasks in the plan based on the Town's financial resources. Even though the tasks contained in the 2017 Strategic Plan have been reprioritized, the Commission still believes that all of the tasks in the plan continue to be relevant. The priorities for all of the tasks in the strategic plan consist of priorities such as Highest, High, and Medium.

The Strategic Planning Advisory Commission is also planning a major update to the strategic plan for 2020. Much of the focus on the next strategic plan will be based on a community visioning process that will be initiated by the Fountain Hills Cultural and Civic Association later this year. After receiving input from community members who participate in surveys and a visioning process, the outcomes from these inputs will influence the development of the 2020 Strategic Plan.

Risk Analysis (options or alternatives with implications): N/A

Fiscal Impact (initial and ongoing costs; budget status): N/A

Budget Reference (page number): N/A

Funding Source: NA

If Multiple Funds utilized, list here: N/A

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): The Strategic Planning Advisory Commission recommends Council approval of the reprioritization of the 2017 Strategic Plan tasks.

Staff Recommendation(s): Staff recommends Council approval of the reprioritization of the 2017 Strategic Plan tasks

List Attachment(s): 2017 Strategic Plan (Reprioritized) and 2017 Strategic Plan Summary

SUGGESTED MOTION (for Council use): Move to approve the reprioritization of the tasks contained in the 2017 Strategic Plan, as recommended by the Strategic Planning Advisory Commission.

Prepared by:

NA Date

Director's Approval:

NA Date

Approved:



Grady E. Miller, Town Manager 3/11/2019



2017 STRATEGIC PLAN

STRATEGIC GOALS

VISION

Fountain Hills is a distinctive community with long term economic sustainability and vitality anchored with an active and vibrant town citizenship that serves to invigorate a rich cultural, social, and economic quality of life.

VALUES

Preserve the health, well being, and safety of all residents and visitors.

Champion the diversity of experiences our residents bring to our community and rely on this depth of experience to innovatively address our challenges and continually improve our community.

Take responsibility for our Town's success by building partnerships and investing in our talent and resources.

Steward this unique enclave, dedicated to preserving the environment and visual aesthetic and to living in balance with the Sonoran Desert.

Encourage a strong community that meets the needs of a growing, balanced demographic.

1 Economic Growth

1.1 Market Fountain Hills

- 1.1a Develop a community brand/vision/marketing plan
- 1.1b Develop a new business resource package
- 1.1c Increase funding for business accelerator programs

1.2 Sustain Commercial Businesses

- 1.2a Rezone undeveloped commercial property to residential where feasible
- 1.2b Adopt a text amendment that allows residential uses on commercially rezoned properties
- 1.2c Rezone un-platted land for greater density and affordable family homes

1.3 Promote Tourism

- 1.3a Create and expand destination events

1.4 Higher Education

- 1.4a Explore higher education options and opportunities in Fountain Hills

2 Infrastructure Maintenance

2.1 Invest in Fountain Hills

- 2.1a Develop and implement an investment plan to bring streets, buildings, and parks up to established standards
- 2.1b Commission a study to identify gap between actual and subdivision ordinance specifications and determine cost of meeting ordinance specifications

2.2 Promote Environmentally Friendly Initiatives

- 2.2a Develop and adopt a comprehensive environmental plan
- 2.2b Research and report on economic and logistic feasibility of electric car charging stations

3 Demographic Balance

3.1 Attract Demographic

- 3.1a Work with State Land Trust to increase residential density

3.2 Market and Promote

- 3.2a Distribute Town's marketing plan to local businesses
- 3.2b Expand use of social media and on-line messaging
- 3.2c Include family branding in marketing plan
- 3.2d Organize a young professionals group or organization
- 3.2e Organize specialty youth camps
- 3.2f Support youth club sports

4 Financial Stability and Sustainability

4.1 Identify Sources of New Revenue

- 4.1a Adequately fund all identified reserve funds
- 4.1b Identify revenue options
- 4.1c Increase revenues to meet community needs including addressing projected operating shortfall

5 Community and Quality of Life

5.1 Promote Education System

- 5.1a Include local school strengths in marketing plan
- 5.1b Work with FHUSD to maximize property values
- 5.1c Explore selling/leasing unused properties

5.2 Utilize Intergovernmental Relations to Achieve Priorities

- 5.2a Increase community efforts to lobby for municipal issues

5.3 Leverage the Talents of Residents to the Town's Advantage

- 5.3a Utilize effective volunteer skills and talents

STRATEGIC OBJECTIVES AND TASKS



Town of Fountain Hills

2017 Strategic Plan

May 18, 2017

TOWN OF FOUNTAIN HILLS 2017 STRATEGIC PLAN

Goal # 1: Maximize Economic Development Opportunities in Fountain Hills

Objective #1 – Create or Utilize Tools to Help Market Fountain Hills for Economic Development Opportunities

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Develop a community brand/vision/marketing plan for Fountain Hills	Scott Cooper	June 2019	In progress
☐ Develop a new business resource package	Scott Cooper	June 2017	Completed
☐ Increase funding for business accelerator programs	Scott Cooper	July 2018	Completed
☐ Explore higher education opportunities in Fountain Hills	Scott Cooper	December 2019	In progress/working with EVIT & CC

Objective #2 – Increase Population and Residential Densities to Sustain Existing and Future Commercial Businesses in Town

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Rezone undeveloped commercial property to residential where feasible	Scott Cooper/ Bob Rodgers	Ongoing	As opportunities present themselves
☐ Adopt a text amendment that allows residential uses on commercially zoned properties	Bob Rodgers	June 2017	Completed
☐ Rezone unplatted land for greater density and affordable family homes	Bob Rodgers	Ongoing	As opportunities present themselves

Objective #3 – Market/Promote Tourism to Generate Hotel Stays and Higher Dollar Expenditures During Visits to Fountain Hills

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Create and expand destination events	Rachael Goodwin/Grace Rodman-Guetter	June 2019	Ongoing St. Patrick's Day / Fourth at the Fountain Turkey Trot / Craft Classic / Disc Golf Tournament

Yellow – Highest
 Blue – High
 White – Medium

TOWN OF FOUNTAIN HILLS 2017 STRATEGIC PLAN

Goal # 2: Ensure that Infrastructure in Fountain Hills is Well-Maintained and Safe

Objective #1 – Invest in and Maintain the Community's Infrastructure

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
❑ Develop and implement an investment plan to bring streets, buildings, and parks up to established standards	Grady Miller/ Craig Rudolphy/Justin Weldy	June 2019	Pavement Analysis Report completed (Facilities Replacement Fund)
❑ Commission a study to identify gap between actual and subdivision ordinance specifications and determine cost of meeting ordinance specifications	Justin Weldy/ Bob Rodgers	June 2019	Reviewed/Identified options to discuss

Objective #2 – Promote Environmentally Friendly Initiatives

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
❑ Develop and adopt a comprehensive environmental plan for Fountain Hills	Justin Weldy/Raymond Rees	June 2019	In progress
❑ Research and report on economic and logistic feasibility of electric car charging stations	Justin Weldy	June 2018	Review

Yellow – Highest

Blue – High

White – Medium

TOWN OF FOUNTAIN HILLS 2017 STRATEGIC PLAN

Goal # 3: Attract Families and Working Professionals to Fountain Hills

Objective #1 – Utilize Landuse Planning to Attract Families to Fountain Hills

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Work with State Land Trust to increase residential density	Council/Staff	December 2018	Ongoing efforts

Objective #2 – Market and Promote Fountain Hills as a Unique Place for Families and Working Professionals

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Collaborate with businesses in promoting town's marketing plan	Scott Cooper/Grace Rodman-Guetter	July 2019	Ongoing
☐ Expand use of Social Media and on-line messaging	Grace Rodman-Guetter	Ongoing	Facilitating nine social media pages; Recreation Instagram account-August 2018.
☐ Include family branding in marketing plan	Grace Rodman-Guetter/ Scott Cooper	June 2019	In progress
☐ Organize a young professionals group or organization	Scott Cooper	June 2018	Completed/Formed FH Young Community
☐ Organize specialty youth camps (robotics, coding, arts, etc.)	Rachael Goodwin/ Corey Povar	Summer 2018	Created first summer youth camp/ongoing Spring camp/Community Center take-over
☐ Support youth club sports	Rachael Goodwin/ Corey Povar	Ongoing	Use of Town facilities at no cost Expand programs

Yellow – Highest Blue – High White – Medium

TOWN OF FOUNTAIN HILLS 2017 STRATEGIC PLAN

Goal # 4: Ensure that Fountain Hills Finances are Stable and Sustainable

Objective #1 – Identify Sustainable Sources of Revenue to Sustain Funding of Town Core Services

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Adequately fund all identified reserve funds	Town Council/Town Manager/ Craig Rudolphy	December 2027	
☐ Identify revenue options	Town Staff/Town Manager/Town Council	September 2017	Completed/October 2017
☐ Increase revenues to meet community needs including addressing projected operating shortfall	Town Manager/Town Council	November 2018	Town Election-Property Tax/May 2018

TOWN OF FOUNTAIN HILLS 2017 STRATEGIC PLAN

Goal # 5: Focus on Strengthening the Community and Improving Town's Quality of Life

Objective #1 – Partner with the Fountain Hills Unified School District to Promote FH Education System

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Include local school strengths in marketing plan	Scott Cooper/Grace Rodman-Guetter	June 2019	Ongoing
☐ Work with FHUSD to maximize its property values	Town Staff/Council/FHUSD	December 2017	Addressed at 2/21/17 Joint Meeting
☐ Explore selling/leasing unused properties	Town Staff/Council/FHUSD	December 2017	Addressed at 2/21/17 Joint Meeting

Objective #2 – Utilize Intergovernmental Relations to Achieve Fountain Hills Priorities

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Increase community efforts to lobby for municipal issues	Town Manager/Town Council	January 2018	Joined RPTA East Valley Partnership National League of Cities-July 2018 Continue to work with League of Cities & Towns to oppose Bills that are harmful to cities & towns

Objective #3 – Leverage the Talents of Residents to the Advantage of Fountain Hills

<u>Tasks</u>	<u>Lead Responsibility</u>	<u>Projected Completion Date</u>	<u>Completion Date</u>
☐ Utilize effective volunteer skills and talents	Heather Ware	Ongoing	Ongoing/over 900 volunteers • Make A Difference Day • Home Delivered Meals • Give A Lift Program • Activities & Volunteer Expo • Mayor's Youth Council • Save Our Sculptures Program • Community Center Christmas Decorating & Celebration • Commissioners



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Regular

Submitting Department: Community Services

Staff Contact Information: Rachael Goodwin

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF Approving CS2019-006 for General Construction Services, which encompasses fifteen (15) as-need basis Job Order Master Agreement Contracts: 2019-006U1, 2019-006U2, 2019-006S1, 2019-006S2, 2019-006A, 2019-006B, 2019-006C, 2019-006P1, 2019-006P2, 2019-006C1, 2019-006C2, 2019-006C3, 2019-006F1, 2019-006F2 and 2019-006F3 with identical Terms for a period of one year with up to four (one) year renewable options and with identical Compensation not to exceed \$125,000 per contract in a twelve (12) month period.

Applicant:

Applicant Contact Information:

Owner:

Owner Contact Information:

Property Location:

Related Ordinance, Policy or Guiding Principle:

Staff Summary (background):

The Town periodically uses various vendors from different trades to provide professional services relating to utilities, storm clean-up, facility maintenance, playground safety and installation, general construction, and paving and concrete. With a desire to consolidate these services under one contract, the Town issued a Request for Qualifications (RFQ) from qualified, licensed vendors interested in providing some or all of the General Construction Services under Contract 2019-006, through the use of Job Order Contracting (JOC)

JOC is an Arizona-approved procurement process that provides for organizations to get numerous, commonly encountered construction projects done quickly and easily through multi-year contracts. This procedure reduces unnecessary levels of engineering, design, and contract procurement time along with construction project procurement costs by awarding long-term contracts for a wide variety of renovation, repair and construction projects.

This master agreement will provide all departments within the Town with vendors from a variety of trades that will offer a broad range of construction services on an as-needed basis.

The RFQ was published in the Fountain Hills Times on 11/21/18 and 11/28/18 and in the Arizona Business Gazette on 11/22/18 and 11/29/18, as well as the Town's website and at Town Hall. The Town received sixteen (16) proposals on or prior to the deadline of January 7, 2019.

After thorough review by an internal committee, the Town accepted fifteen (15) of the proposals and requested a Master Agreement be prepared by the Town Attorney for: Utility, Storm Clean-up, General, Playground, Paving & Concrete, and Facility. Each agreement will be for an amount not to exceed \$125,000 per year for a period of one year with up to four, one-year renewal options.

These agreements have all been forwarded to the following vendors, and have been executed and returned to the Town:

UTILITY

2019-006U1 Utility Construction Company, Inc.
2019-006U2 REDHAWK SOLUTIONS LLC

STORM CLEAN-UP

2019-006S1 T&T Construction, Inc.
2019-006S2 Carume Contracting Quality Construction LLC

GENERAL

2019-006A Johnson Carlier LLC
2019-006B GCON INC
2019-006C CORE Construction, Inc.

PLAYGROUND

2019-006P1 Caliente Construction
2019-006P2 JP and Sons Contracting Inc.

PAVING & CONCRETE

2019-006C1 Vincon LLC
2019-006C2 LAN-CON INC
2019-006C3 Stormwater Plans, LLC dba SWP Contracting and Paving

FACILITY

2019-006F1 FCI Constructors, Inc.
2019-006F2 Hardison/Downey Construction, Inc.
2019-006F3 Builders Guild, Inc. Construction Professionals

Risk Analysis (options or alternatives with implications):

Fiscal Impact (initial and ongoing costs; budget status):

Budget Reference (page number):

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): Click or tap here to enter text.

Staff Recommendation(s): Rachael Goodwin, Community Services Director and Craig Rudolphy, Director of Finance

List Attachment(s): General Construction Services Job Order Contract ("JOC") CS2019-006

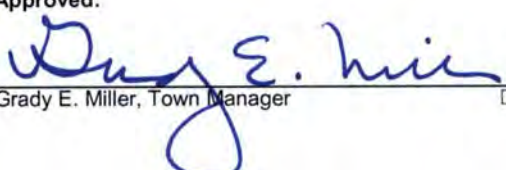
SUGGESTED MOTION (for Council use): Move to approve CS2019-006 for General Construction Services, which encompasses fifteen (15) as-need basis Job Order Master Agreement Contracts: 2019-006U1, 2019-006U2, 2019-006S1, 2019-006S2, 2019-006A, 2019-006B, 2019-006C, 2019-006P1, 2019-006P2, 2019-006C1, 2019-006C2, 2019-006C3, 2019-006F1, 2019-006F2 and 2019-006F3 with identical Terms for a period of one year with up to four (one) year renewable options and with identical Compensation not to exceed \$125,000 per contract in a twelve (12) month period.

Prepared by:


Angela Padgett-Espiritu, Executive Assistant

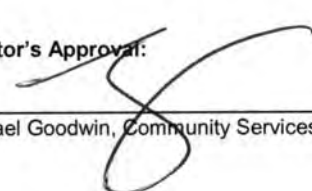
3/11/2019

Approved:


Grady E. Miller, Town Manager

Date

Director's Approval:


Rachael Goodwin, Community Services Director

3/11/2019



**REQUEST FOR
STATEMENTS OF QUALIFICATIONS
FOR
GENERAL CONSTRUCTION SERVICES**

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

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number: **CS2019-006**

Solicitation Title: **GENERAL CONSTRUCTION SERVICES**

Release Date: **November 21 and 28, 2018 – Fountain Hills Times
November 22 and 29, 2018 – Arizona Business Gazette**

Pre-Submittal Conference:
(if scheduled) **TBD**

Final Date for Inquiries: **12/20/2018**

SOQ Due Date and Time: **1/7/2019
10:00 a.m. (local time, Phoenix, Arizona)**

Target Town Council Award Date: **1/15/2019**

Anticipated Agreement Start Date: **1/16/2019**

Town Representatives: **Kevin Snipes ksnipes@fh.az.gov
480-816-5178
Rachael Goodwin rgoodwin@fh.az.gov
480-816-5135**

NOTE:

- In the event that a Vendor cannot be selected based solely on SOQ submitted, Oral Interviews may be conducted at the Town's sole discretion.
- The Town of Fountain Hills reserves the right to amend the solicitation schedule as necessary.

**REQUEST FOR
STATEMENTS OF QUALIFICATIONS
FOR
GENERAL CONSTRUCTION SERVICES
JOB ORDER CONTRACT**

I. Purpose

The Town of Fountain Hills (the "Town") is issuing this Request For Qualifications (this "RFQ") seeking statements of qualifications ("SOQ") from qualified, licensed firms ("Vendors") interested in providing some or all of the General Construction Services under a Job Order Contracting ("JOC") basis, as more particularly described in the Scope of Work ("JOC Services") described below.

Vendors are invited to participate in the competitive selection process for the Services outlined in this RFQ. Responding parties shall review their submissions to ensure the requirements contained in the RFQ Terms and Conditions, attached as Appendix 1, are satisfied. In accordance with the Town's Procurement Code, the Town will accept sealed SOQs for the Services specified below.

II. Scope of Work

Vendors may be asked to provide some or all of the services of installation, demolition, removal and disposal of the following:

- | | |
|---|--|
| a) Buildings & improvements | l) Plumbing/sprinklers |
| b) Slabs/foundations | m) Lighting |
| c) Walls/flooring/roofing | n) All wiring, plumbing, conduit |
| d) Debris | o) Fixtures and equipment |
| e) Doors/windows | p) Park benches, ramadas and picnic tables |
| f) Canopies/shades | q) Other construction-related projects and materials as needed |
| g) Ramps | |
| h) Steps | |
| i) Fences/gates | |
| j) Playground equipment and surfaces | |
| k) Sport fields, turf, bleachers and structures | |

III. RFQ Process

This RFQ is subject to, and incorporates by reference, the “RFQ Terms and Conditions” attached hereto as Appendix 1. The RFQ Terms and Conditions outline the RFQ Process and requirements for the SOQ. Vendor acknowledges that he/she has reviewed the RFQ Terms and Conditions, including the SOQ Format in Section II thereof. Vendor further acknowledges that Vendor may be disqualified from this RFQ for failure to follow the instructions provided in the RFQ Terms and Conditions. If selected by the Town to provide JOC Services under this RFQ, Vendor agrees to that it shall enter into a “Job Order Master Agreement” substantially similar to the agreement attached hereto as Appendix 2.

The following checklist is intended to serve as a reference guide for Vendors submitting an SOQ. **This checklist does not explain everything contained in this RFQ.** It is not nor is it intended to be a substitute for reading all the materials included in this RFQ. Rather, it is intended to highlight the main steps in the RFQ process. Among other things, Vendor must:

- ☐ **Read all materials included in this RFQ**, including Appendix 1 and Appendix 2.
- ☐ Complete and include with the SOQ the “Vendor Information” section contained in Section IV of this form.
- ☐ Submit the original and three copies of the SOQ (*see Appendix 1, Section 1.2(B) for further details*).
- ☐ Submit a cover letter that satisfies all requirements (*see Appendix 1, Section 1.2(C) for further details*).
- ☐ Submit an SOQ that is organized in accordance with and contains all information requested in the RFQ (*see Appendix 1, Section 2.2 for further details*). The SOQ must conform in all respects with all requirements listed in this RFQ and accompanying materials.
- ☐ Appropriately seal, mark, and deliver the SOQ (*see Appendix 1, Section 1.2(E) and (F) for further details*).

**TOWN OF FOUNTAIN HILLS
COMMUNITY SERVICES DEPARTMENT
CS2019-006**

IV. Vendor Information

By submitting an SOQ, the submitting Vendor certifies that it has reviewed the entire RFQ, including Appendix 1 and Appendix 2, if awarded the Agreement, agrees to be bound by all terms and conditions contained therein.

VENDOR SUBMITTING SOQ

FEDERAL TAX ID NUMBER

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE FAX #

CITY STATE ZIP

DATE

WEB SITE:

E-MAIL ADDRESS:

ROC License Numbers and Classifications:

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.

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RFQ TERMS AND CONDITIONS

[See Following Pages]

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I. RFQ PROCESS: AWARD OF AGREEMENT

1.1 Purpose; Scope of Work. The Town of Fountain Hills (the "Town") is issuing this Request For Qualifications (this "RFQ") seeking statements of qualifications ("SOQ") from qualified, licensed firms ("Vendors") interested in providing some or all of the General Construction Services under a Job Order Contracting ("JOC") basis, as more particularly described in the Scope of Work ("JOC Services") attached to the sample Job Order Master Agreement ("JOC Agreement") included in Section B to this RFQ as Exhibit B. In accordance with the Town's Procurement Code, the Town will accept sealed SOQ for the Services specified in the Scope of Work in the sample JOC Agreement.

1.2 Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

A. Irregular or Non-responsive SOQ. The Town shall consider as "irregular" or "non-responsive" and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ lacking sufficient information to enable the Town to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions shall be cause for rejection. An SOQ may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the Town, any of the following are true:

(1) Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Service.

(2) Vendor has a past record of failing to fully perform or fulfill contractual obligations.

(3) Vendor cannot demonstrate financial stability. The Town reserves the right to require Vendor to provide a copy of Vendor's financial statements for the previous two fiscal years.

(4) Vendor cannot demonstrate proper registration, licensing, and/or certification for the Services for which Vendor is submitting its SOQ at the time of submission.

(5) Vendor has not been in continuous business for a minimum of five years.

(6) Vendor's SOQ contains false, inaccurate or misleading statements that, in the opinion of the Town Manager or authorized designee, are intended to mislead the Town in its evaluation of the SOQ.

APPENDIX 1

B. Submittal Quantities. Interested Vendors must submit **one original** and three copies of the SOQ. Failure to adhere to the submittal quantity criteria shall result in the SOQ being considered non-responsive.

C. Required Submittal. The SOQ shall be submitted with a cover letter with an **original ink** signature by a person authorized to bind the Vendor. An SOQ submitted without a cover letter with an **original ink signature** by a person authorized to bind the Vendor shall be considered non-responsive. The SOQ shall be a maximum of 20 pages to address the RFQ criteria (excluding resumes and the Vendor Information Form, but including the materials necessary to address project understanding and general information).

D. Vendor Responsibilities. All Vendors shall (1) examine the entire RFQ, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting an SOQ and (4) submit the entire SOQ by the official SOQ Due Date and Time. A late SOQ will not be considered. A Vendor submitting a late SOQ shall be so notified. Negligence in preparing an SOQ shall not be good cause for withdrawal after the Proposal Due Date and Time.

E. Sealed Submittals. All SOQ shall be sealed and clearly marked with the SOQ number and title, **(CS2019-006) General Construction Services**, on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed SOQ. The Town is not responsible for the pre-opening of, post-opening of, or the failure to open, any SOQ not properly addressed or identified.

F. Address. All SOQ shall be directed to the following address: Town Clerk, 16705 East Avenue of the Fountains, Fountain Hills, Arizona 85268, or hand-delivered to the Town Clerk's office by the SOQ Due Date and Time indicated on the cover page of this RFQ.

G. Amendment/Withdrawal of SOQ. At any time prior to the specified SOQ Due Date and Time, a Vendor (or designated representative) may amend or withdraw its SOQ. Any erasures, interlineations, or other modifications in the SOQ shall be initialed in **original ink** by the authorized person signing the SOQ. Facsimile, electronic (e-mail) or mailgram SOQ amendments or withdrawals will not be considered. No SOQ shall be altered, amended or withdrawn after the specified SOQ Due Date and Time.

1.3 Cost of SOQ Preparation. The Town does not reimburse the cost of developing, presenting or providing any response to this solicitation. An SOQ submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of the Town and will not be returned.

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1.4 Inquiries.

A. Written/Verbal Inquiries. Any question related to the RFQ shall be directed to one of the Town Representatives whose names appear on the cover page of this RFQ. Questions shall be: (1) submitted verbally only at the Pre-Submittal Conference on the date indicated on the cover page of this RFQ (if such Pre-Submittal Conference is held); or (2) submitted in writing via e-mail by the close of business on the Final Date for Inquiries indicated on the cover page of this RFQ. Any inquiries related to this RFQ shall refer to the title, page and paragraph.

B. Inquiries Answered. Written questions will be read and answered at the Pre-Submittal Conference on the date indicated on the cover page of this RFQ. Except for the Pre-Submittal Conference, verbal or telephone inquiries directed to Town staff **will not be answered**. Within seven (7) business days following the Pre-Submittal Conference, answers to all questions received in writing or via e-mail or verbally at the Pre-Submittal Conference will be mailed, sent via facsimile and/or e-mailed to all parties who obtained an RFQ package from the Town and who legibly provided a mailing address, facsimile and/or e-mail address to the Town. No questions, submitted in any form, will be answered after the Final Date for Inquiries listed on the cover of this RFQ.

C. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFQ. This conference may be designated as mandatory or non-mandatory on the cover page of this RFQ. Additionally, if the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Vendor's SOQ non-responsive. Vendors are strongly encouraged to attend the Pre-Submittal Conference, even if designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFQ in order to prevent any misunderstanding of the Town's requirements. Any doubt as to the requirements of this RFQ or any apparent omission or discrepancy should be presented to the Town at this conference. The Town will then determine if any action is necessary and may issue a written amendment or addendum to this RFQ. Oral statements or instructions will not constitute amendments or addenda to this RFQ.

1.5 Addenda. Any addendum issued as a result of any change in this RFQ shall become part of the RFQ and must be acknowledged in the SOQ submittal. Failure to indicate receipt of the addendum shall result in the SOQ being rejected as non-responsive.

1.6 Public Record. All SOQ shall become the property of the Town and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the Town's Procurement Code.

1.7 Confidential Information. If a Vendor believes that an SOQ or protest contains information that should be withheld from the public record, a statement advising the Town Representative of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Vendor as confidential shall not be disclosed until the Town Representative makes a written determination. The Town Representative shall review the statement and information with the Town Attorney and shall determine in writing whether the

APPENDIX 1

information shall be withheld. If the Town Attorney determines that it is proper to disclose the information, the Town Representative shall inform the Vendor in writing of such determination.

1.8 Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor shall be registered with the Arizona Corporation Commission and authorized to do business in Arizona. The Vendor shall provide licensure information with the SOQ. Corporations and partnerships shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission. A Town of Fountain Hills business license is also required.

1.9 Certification. By submitting an SOQ, the Vendor certifies:

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

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a Town employee, officer or agent in connection with the submitted SOQ. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the Town Manager, Department Heads and other Town staff, unless such person is designated as a Town Representative. All contact must be addressed to the Town's Procurement Agent, except for questions submitted as set forth in Section 1.4 (Inquiries) above. Any attempt to influence the selection process by any means shall void the submitted SOQ and any resulting Agreement.

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

E. No Signature/False or Misleading Statement. The signature on the cover letter of the SOQ and the Vendor Information Form is genuine and the person signing has the authority to bind the Vendor. Failure to sign the SOQ and the Vendor Information Form, or signing either with a false or misleading statement, shall void the submitted SOQ and any resulting Agreement.

F. JOC Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample JOC Agreement including the Scope of Work and other Exhibits, and has no exception thereto other than those expressly set forth in writing in the SOQ. Material exception to the JOC Agreement may be a basis for determining that an SOQ is nonresponsive.

APPENDIX 1

1.10 Award of Agreement.

A. Evaluation; Selection. A Selection Committee composed of representatives from the Town will conduct the selection process according to the schedule on the cover page of this RFQ. The Selection Committee will create a final ranking of the Vendors based upon its evaluation of (1) the SOQ, (2) information provided by references and (3) criteria outlined in this RFQ. Upon completion of the final tabulation of points for scored components, the Selection Committee will create a final list, in order of preference, of the most qualified Vendors, as determined in the Selection Committee's sole discretion. The RFQ Administrator may enter into negotiations with any Vendors from the final list.

B. Line Item Option. Unless the SOQ states otherwise, or unless otherwise provided within this RFQ, the Town reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the Town.

C. Multiple Award. The Town, at its sole discretion, may elect to enter into Agreements with multiple Vendors per category of Service who are qualified to provide the Services. The final terms and conditions of the proposed Agreement will be negotiated by the Town with the successful offerors.

D. Form of Agreement. The selected Vendor will be required to execute the Town's standard JOC Agreement in a form acceptable to the Town Attorney. A sample of the JOC Agreement is included with this RFQ. If the Town is unsuccessful in negotiating an Agreement with the preferred Vendors, the Town may then negotiate with other Vendors as the Town sees fit until an Agreement is executed. Town Council approval may be required. The Town reserves the right to terminate the selection process at any time.

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

F. Protests. Any Vendor may protest this RFQ, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the Town Procurement Code.

1.11 Offer. An SOQ submittal is an offer to contract with the Town based upon the terms, conditions and specifications contained in this RFQ and the Vendor's responsive SOQ, unless any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the Town has approved, a professional services agreement between the Town and the Vendor in the form acceptable to the Town Attorney. A sample JOC Agreement is included herein.

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II. STATEMENT OF QUALIFICATIONS FORMAT; SCORING

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the submittal requirements by the Selection Committee. The Selection Committee may conduct oral interviews with Vendors as necessary and in the sole discretion of the Selection Committee.

2.2 Proposal Format and Scoring. The SOQ shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and award points to each SOQ based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria and not the minimum number that the Selection Committee may award.

A. General Information - 10 pts.

- (1) One page cover letter as described in Section 1.2(C).
- (2) Provide Vendor identification information. Explain the Vendor's legal organization including the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation. Provide the name, address and telephone number of the person to contact concerning the SOQ.
- (3) Identify the location of the Vendor's principal office and the local work office, if different from the principal office.
- (4) Provide a general description of the Vendor that is proposing to provide the Services, including years in business.
- (5) Identify any contract or subcontract held by the Vendor or officers of the Vendor that has been terminated within the last five years. Briefly describe the circumstances and the outcome.
- (6) Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.
- (7) Identify whether Vendor has been debarred by any federal, state or local government entity within the last five years, including the government entity, the

APPENDIX 1

circumstances of the debarment determination, whether the debarment is still in effect, and contact information for the debarring office and officer.

(8) Vendor Information Form (may be attached as separate appendix).

B. Experience and Qualifications of the Vendor - 30 pts.

(1) Provide a detailed description of the Vendor's experience in providing similar services to municipalities or other entities of a similar size and in a similar climate to the Town within the past five (5) years, specifically relating experience with respect to Services.

(2) Vendor should demonstrate successful completion of at least three (3) similar projects within the past five (5) years. For the purpose of this Solicitation, "successful completion" means completion of a project within the established schedule and budget and "similar projects" resemble this project in size, nature and scope. Provide a list of at least three organizations for which you successfully completed a similar project. This list shall include, at a minimum, the following information:

- (a) Name of company or organization.
- (b) Contact name.
- (c) Contact address, telephone number and e-mail address.
- (d) Type of services provided.
- (e) Dates of contract initiation and expiration.

These references will be checked, and it is Vendor's responsibility to ensure that all information is accurate and current. Vendor authorizes the Town's representative to verify all information from these references and releases all those concerned from any liability in connection with the information they provide. Inability of the Town to verify references may result in the SOQ being considered non-responsive.

(3) Provide license number, classification, and issuance date all licenses issued by the Arizona Registrar of Contractors applicable to any of the Services for which the Vendor is submitting an SOQ. Inability of the Town to verify proper licensing may result in the SOQ being considered non-responsive.

(4) The Town's representative may conduct any investigation deemed necessary to determine the Vendor's ability to perform the project. Vendors may be requested to submit additional documentation within 72 hours (or as specified) to assist the Town in its evaluation.

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C. Key Positions - 10 pts.

(1) Identify each key personnel member that will render services to the Town including title and relevant experience required, including the proposed Project Manager and Project Engineer.

(2) Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their role will be in providing services to the Town.

(3) If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for selecting subcontractors and providing supervision must be included.

Total Possible Points for SOQ Submittal: 50

Total Points Possible for this RFQ: 100

III. EVALUATION PROCESS

3.1 Selection Committee: An appropriately qualified Selection Committee shall evaluate the responses and performance data that are submitted in response to the SOQ for the proposed contract.

- A. The evaluation will be to determine the qualifications of each Vendor to perform the Services under this RFQ based on the selection criteria listed herein.
- B. In making its determination, the Selection Committee will evaluate the SOQ, client references, interviews (for Vendors on the short-list only), and additional information received or obtained by the Selection Committee. The Committee may request or obtain additional information at any time during the selection process through interviews, presentations, correspondence, and visitation of completed projects or otherwise.
- C. During the selection process, the Town will evaluate each SOQ to determine which Vendors (if any) are best qualified to perform the required Services and can provide the experience specified in this RFQ.

IV. ORAL INTERVIEWS/SHORT LIST; SCORING

4.1 Short List: If necessary, in order of preference, based on criteria established by the Selection Committee, the Selection Committee may conduct oral interviews with Vendors as necessary and in the sole discretion of the Selection Committee.

APPENDIX 1

4.2 Team Oral Presentation/Interview: The Selection Committee may interview each Vendor on the short list so that they may present their credentials, comparable past work, and any ideas they wish to share with the Selection Committee.

- A. The team will be have thirty (30) minutes to present to the Selection Committee their firms qualifications. The roundtable discussion will last sixty (60) minutes for questions and discussion between the Committee and the Vendor. It is the responsibility of the Selection Committee to develop an agenda for this part of the interview. The time limits will be strictly enforced.
- B. No more than six (6) representatives of the Vendor's team may be present (this includes presentation operators if needed). The prospective key personnel for the Project must be present. Only the individuals proposed for the project team are allowed. Individuals other than the project team will not be allowed in the interviews.

4.3 Shortlisted Vendor Evaluation: The Evaluation Committee will evaluate finalist Vendors after the oral presentations/interviews based on the criteria described below. The Town reserves the right to request additional information from Vendors prior to final selection, and to consider information about the Vendors other than that submitted in the SOQ.

- A. Finalist Vendor Team Interview (Maximum 25 Points): The Town may provide interview questions in advance to Vendors. The Town's Selection Committee will evaluate interviews based on the team's responses to questions, ability to effectively communicate, and the Committee's assessment of the team's ability to work successfully with each other and the Town staff. The Town may also ask Vendors to submit written responses to some questions in advance of the interviews.
- B. Strategic Fit (Maximum 25 Points): The Town will evaluate proposed solutions based on overall best fit with the Town goals and objectives. The Committee will consider solution simplicity, overall alignment with the requirements set forth in the SOQ, as well as compliance with contract terms and conditions and any and all additional findings from the Town's due diligence process.

4.4 Project Site Visit: The shortlist Vendors may be invited to participate in a pre-interview project site visit with the Town Project Manager and other representatives. Unless otherwise allowed by the Town, a maximum of two representatives from each Vendor may participate in the site visit.

4.5 Negotiation: The Town will enter into negotiations for a contracts with those Vendors selected for inclusion in the final list. The negotiations shall include consideration of compensation and other contract terms that the Town determines to be fair and reasonable. In making this decision, the Town shall take into account the estimated value, the scope, the complexity and the nature of the Services to be rendered.

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- A. If negotiations are successful, the Town will request approval from the Town Council to execute the Town JOC Agreements for the Services.
- B. If the Town is unable to negotiate a satisfactory agreement with a selected Vendor, at a price and with terms which the Town determines to be fair and reasonable, negotiations with that Vendor will be formally terminated.
- C. The Town may undertake negotiations with additional Vendors until agreements are reached, or determine to reject all Submittals and re-solicit the SOQ, or use another selection process that Town deems prudent.
- D. Vendors that are unable to accommodate the Town regarding acceptable fees and/or costs will not be allowed an opportunity to resubmit fees and/or costs once they have been released from negotiations.

V. AWARD

5.1 Notice of Intent to Award: The next step will be for the Town to issue a Notice of Intent to Award, and if applicable, notices of the intent not to award to all or to some Vendors. The Town reserves the right to cancel this RFQ, to reject any or all Vendors, and to waive or decline to waive any irregularities in any submitted Responses, or to withhold the award for any reason it may determine in the best interest of the Town.

5.2 Award: The successful Vendors, if any, will be selected and recommended by the Selection Committee to the appropriate Town Officer and/or Town Council for Award. Any JOC Agreement resulting from this RFQ will be awarded consistent with the appropriate Town authority as approved in the Town's Purchasing Policy and requirements, and applicable statutes. No contract shall exist until the final written Contract is properly and formally approved for Award and fully executed by the Vendor and the properly authorized Town signatory.

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JOB ORDER MASTER AGREEMENT

[See Following Pages]

**JOB ORDER MASTER AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND**

THIS JOB ORDER MASTER AGREEMENT (this "Contract") is entered into as of _____, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and _____, a(n) _____ (the "Contractor").

RECITALS

A. The Town issued a Request for Qualifications, CS2019-006, Construction Services (the "RFQ"), a copy of which is on file in the Town Clerk's Office and incorporated herein by reference, seeking statements of qualifications from vendors for professional consulting services.

B. The Contractor submitted a Statement of Qualifications (the "SOQ") in response to the RFQ, attached hereto as Exhibit A and incorporated herein by reference, and the Town desires to enter into an Agreement with the Contractor for Construction Services (the "Services").

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 Contractor hereby agree as follows:

1. Term of Contract. This Contract shall be effective as of the date first set forth above and shall remain in full force and effect for one year with up to four (one) year renewable options.

2. Job Order Master Contract Process. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Construction Services within the scope of this Contract as Town may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders will generally include Design Services and where Design Services are necessary, Town will contract for those services separately. A separate Job Order will be issued for each Project describing the specific Work to be performed by the Contractor for that Project. There may be multiple Projects, and, therefore, multiple Job Orders, under this Contract.

2.2. Town shall have the right to perform work of the types included in this Contract itself or to have other Contractors perform such work. In addition, as to any Job Order, Town may elect to have Design Services provided by Town's internal consultants or by

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independent Design Professionals. Such action by Town shall not constitute a breach or otherwise violate this Contract.

2.3 This Contract does not obligate or require Town to offer any Job Order to Contractor and no Contract will exist for any specific Work until a Job Order for such Work has been fully executed by Town and Contractor.

2.4 Scope of Work Under This Contract. This Contract is for a broad range of maintenance, repair and minor construction work on real property. The scope of this Contract will be to provide construction services, including minor associated incidental design services, for a broad range of Town renovation and construction projects and will include a variety of trades as set forth on Exhibit B.

2.5 Contract Price for Each Job Order. The amount to be paid by Town for the Project under each Job Order is the Contract Price for the Job Order. The Contract Price includes the Contract Price for the Work. The Contract Price for any Job Order may be a Fixed Price or a Guaranteed Maximum Price (GMP), subject to the following:

A. The cumulative sum of the Job Orders performed by Contractor during any twelve (12) month period shall not exceed \$125,000.00.

B. There is no limit on the number of Job Orders that Town may issue to Contractor during any twelve (12) month period of this Contract or during the entire period this Contract is in effect.

C. Contractor may not refuse any Job Order under this Contract properly issued by Town, unless Contractor explains, in writing and to Town's satisfaction, that the scope of work under a specific Job Order is poorly defined or hazardous to health or safety.

2.6 Job Order Format. Each Job Order shall be in the form attached as Exhibit C hereto and shall not be effective or binding until fully executed by all parties.

2.7 Job Order Development. The general steps for development of a Job Order are:

A. When Town identifies a need for performance of a Project under a Job Order, Town will issue a request to Contractor and also advise Contractor of the nature of the Work to be done. At the same time, Town will advise the Contractor if Design Services are required and how those services will be provided. Within two (2) working days of receipt of this notification, or such other time as set by Town, Contractor will:

(i) Visit the proposed site of the Project with Town designated representatives; and

(ii) Arrange with Town to further define the scope of the needed Project.

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B. Contractor will thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

C. Town will arrange for any needed Design Services to produce the Drawings and Specifications, with a copy to Town and a copy to Contractor. Design Services will not begin until the scope of Design Services is approved by Town. The Drawings and Specifications developed as part of the Design Services are subject to approval by Town. If there are no Design Services required for a specific Job Order, Town will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

D. Upon establishment of the scope of Work needed for a Project, Contractor will prepare its proposal for accomplishment of the Project under either a Fixed Price or a Guaranteed Maximum Price (GMP), as in a form and substance determined by Town. GMP (Open Book) pricing shall consist of direct job cost, project-specific general conditions, general and administrative cost, profit, Bond cost and sales tax will be added to Open Book pricing for total Job Order Cost. GMP Pricing will not exceed the Contractor's Fee Proposal attached as Exhibit D.

2.7.2 Issuance of Job Orders. The Town Representative will compare the Contractor's Job Order Proposal with Town's estimate, schedules and other requirements, and then, if the Town Representative determines it is in the best interest of Town, arrange a meeting with Contractor, at which time the Contractor's Job Order Proposal will be discussed and negotiated. If the Town Representative determines that it is in the best interest of Town, Town shall then issue a completed Job Order, in the form attached as Exhibit C, to Contractor for execution.

3. Performance of the Work.

3.1 Specifications. The Maricopa Association of Governments, Uniform Standard Specifications for Public Works Construction, current edition ("MAG Specifications"), Maricopa Association of Governments, Standard Details for Public Works Construction, current edition ("MAG Details"), have been adopted by Town and shall apply to the Work, to the extent applicable. In addition, to the extent Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications or MAG Details (collectively the "Town Specifications"), those Town Specifications shall apply to the Work when and where appropriate and the Contractor shall fully comply therewith. Any questions or concerns about the applicability of any specific MAG or Town Specifications to the Work shall be directed in writing to the Project Engineer. The MAG Specifications, MAG Details and Town Specifications are incorporated into the Contract.

3.2 Coordination. Contractor shall be responsible for coordinating the performance of the Work with the Project Engineer, Project Manager, Engineering Department

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and other departments or agencies within Town, the design professionals and other contractors involved in the Project. Contractor shall also cooperate with Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

3.3. Inspection/Reporting. Before starting the Work, the Contractor shall carefully study and compare the various plans, drawings, other Contract Documents, and Specifications relative to that portion of the Work, as well as the information furnished by Town, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to Town in such form as Town may require. The Contractor shall be liable to Town for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions in the Contract Documents if the Contractor, with the exercise of reasonable care should have recognized such error, inconsistency, omission or difference and fails to report it to Town. The exactness of grades, elevations, dimensions, or locations given on any Drawings, or the work installed by other contractors, is not guaranteed by Town. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its work with existing or other work, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any increase in the Contract Price. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to Town, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

3.4. Extra Work/Changes in the Work/Approvals. Town reserves the right to make such changes in the plans and specifications for the Work, within the general scope thereof, as it may deem appropriate and any such change as set forth in a written Change Order or Extra Work Order shall be deemed a part of this Contract as if originally incorporated herein.

A. Contractor shall not be entitled to payment for additional work unless a written Change Order or Extra Work Order, in form and content prescribed by Town, has been executed by Town prior to starting the additional work; on all such Change Orders and Extra Work Orders, Contractor shall specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order or Extra Work Order. In no event, however, will the Contractor be entitled to collect for overhead and profit for such changes more than the percentages of Contractor's actual and direct cost incurred in such change as set forth in the corresponding Change Order. If additional work is performed on the basis of an Extra Work Order, a corresponding Change Order shall be prepared, approved and processed by Town before payment can be made to Contractor.

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B. Upon request by Town, Contractor shall submit for Town's prior approval all samples, product data, shop drawings on all materials, systems and equipment to be incorporated into the Work.

C. The Project Manager shall be designated by the Town. All communications concerning performance of the Work or the Project shall be provided to the designated Project Manager, who has the authority to act on behalf of Town, as delineated and limited by the Contract Documents and applicable law. The Project Manager has no authority to bind Town or Town Council in contravention of any Town Code, State or Federal statute or regulation, or this Contract. Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor, but e-mail communications are not binding upon Town and cannot change the terms of the Contract or the scope of Work, or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect.

3.5. Time/Float. Contractor shall strictly comply with the Project schedule approved in writing by Town (the "Contract Time"). The Contract Time shall start with the Notice to Proceed and end with final acceptance of the Work. Contractor shall commence performance of the Work and complete the Project through both substantial completion and final acceptance within the Contract Time, and failure to do so shall be a material breach of the Contract.

A. Time is of the essence of the Contract, for the Project, for the Work, and for each phase and/or designated milestone thereof.

B. No modification to the Contract Documents or the Contract Time shall be effective unless approved in writing, in advance, by Town.

C. The total float time within the overall schedule is for the exclusive use of Town, but Town may approve Contractor's use of float as needed to meet contract milestones and the Project completion date.

4. Payments. Payments shall be made as follows:

4.1 Progress Payments.

A. Progress billings will be processed monthly starting upon Project commencement.

B. Contractor billings shall be submitted on Contractor's typical invoice form.

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C. A list of all suppliers (including name, contact information and phone numbers) to be used by Contractor must be received and approved by Town, prior to release of Contractor's monthly progress payment. Town's approval of Contractor's suppliers shall not release Contractor from any of its obligations under this Contract, including without limitation, Contractor's indemnification, and insurance obligations.

D. If required by Town, Contractor will be required to execute an Unconditional Waiver and Release on Progress Payment or Unconditional Waiver and Release on final payment contemporaneously with the receipt of partial or final payments, or other form of acknowledgment of payment and/or release of claims as required by Town, as well as unconditional lien waivers executed by subcontractors and/or suppliers who have provided labor, materials, or rental equipment to Contractor. Payments of any amounts covered by any conditional lien waivers may, at Town's sole discretion, be made by joint check issued to the Contractor and the subcontractor or supplier.

E. Contractor shall submit all other supporting documentation substantiating its Invoice as may be reasonably required by the Engineer, Project Manager, Town, and applicable laws.

4.2 Final Payment. Final payment including retainage shall be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and accepted by Town and Engineer; (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" drawings, plans and specifications have been delivered to Town; (iii) if required by Town, full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Town; (iv) all conditions and requirements imposed by Town or any financing entity for the corresponding disbursement have been met; and (v) Contractor delivers to Town an Invoice requesting payment. The Contract number must be referenced on all invoices.

4.3 Town's Right to Withhold Payment. Town may withhold payment to such extent as may be necessary in Town's opinion to protect Town from loss for which the Contractor is responsible, including, without limitation:

- A. defective Work not remedied;
- B. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Town is provided by the Contractor;
- C. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- D. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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E. damage to Town or another contractor;

F. reasonable evidence that the Work will not be completed within the Contract Time set forth in Exhibit B (or otherwise by Town), and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

G. persistent failure to carry out the Work in accordance with the Contract Documents.

4.4 Joint/Direct Checks. Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of Town it is advisable, payments may be made directly to Contractor's subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under this Contract.

4.5 Payment Not A Waiver. No payment (nor use or occupancy of the Project by Town) shall be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of Town.

4.6. Liens and Bond Claims. Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as Town may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of Town, or against payments due from Town to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of Town, against payment due from Town to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claims. In addition, Contractor agrees to defend, indemnify, and hold harmless Town from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for Work performed.

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. Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Contractor agrees to assign specific individuals to key positions. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not

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be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel 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 Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

8. Licenses; Materials. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, without limitation, all of Contractor's applicable licenses issued by the Arizona Registrar of Contractors. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Contractor.

9. Work Standards, Warranties and Correction of Work. All materials and any other items incorporated into the Work shall be new, and all Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the plans, specifications, schedules, Contract Documents and all other terms and conditions of the Contract.

9.1 Express Warranties. Within fourteen (14) days of the completion of the Work (or at such earlier time as requested by Town), Contractor shall execute and deliver to Town all warranties regarding the Work required by the Project plans and specifications. These warranties shall be in form and content satisfactory to Town, and any other person reasonably requested by Town, or Town's lender(s).

9.2 Standard Warranty. In the absence of any requirement for warranties in the Project specifications, Contractor hereby warrants that the Work shall be free of any defects in quality or workmanship for a period of two (2) years after the date of completion and acceptance of the Project by Town.

9.3 Correction of Work. The Contractor shall promptly correct Work rejected by the Project Engineer, Project Manager, or Town as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work. In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of (two) 2 years after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, Town may correct it and the Contractor shall reimburse Town for the cost of correction.

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10. Indemnification. To the fullest extent permitted by law, the Contractor 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 Contractor, its officers, employees, agents, or any tier of subcontractor in connection with Contractor'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 Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this 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 Contractor. 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 Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this 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.

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E. Primary Insurance. Contractor'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 Contractor. Contractor 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. Contractor 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, Contractor 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 Contractor. Contractor 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, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this 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

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by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFQ number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFQ number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFQ number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

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

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

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

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

(2) Contractor'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 Contractor 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. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy

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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. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this 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 Contractor engages in any professional services or work in any way related to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this 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.

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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 Contractor of written notice by the Town. Upon termination for convenience, Contractor 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 Contractor 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 Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

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 Contractor, 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 Contractor or any agent or representative of the Contractor 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 Contractor 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

APPENDIX 2

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 Contractor fully informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Contractor shall be relieved of any subsequent obligation under this Agreement.

12.7. Upon any termination of the Contract, no further payments shall be due from Town to Contractor unless and until Contractor has delivered to Town any and all documentation required to be maintained by Contractor or provided by Contractor to Town.

12.8. Under no circumstances shall Town have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

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 Contractor 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. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the Town, shall determine the time of its performance of the Services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibit B. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this 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. Contractor 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 Contractor 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

APPENDIX 2

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 Contractor.

13.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

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

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

13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

13.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this 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 Contractor.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Contractor from any

APPENDIX 2

responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

13.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

13.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Contractor any amounts Contractor 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 Contractor any amounts Contractor owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

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

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

With copy to: Town of Fountain Hills
 4711 East Falcon Drive, Suite 111
 Mesa, Arizona 85215
 Attn: Aaron D. Arnson, Town Attorney

If to Contractor: _____

 Attn: _____

APPENDIX 2

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

13.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

13.16 Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under subsection 13.17 below, Contractor'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 Contractor 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 Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

APPENDIX 2

13.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

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

13.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, the Fee Proposal, the RFQ and the Contractor's SOQ, the documents shall govern in the order listed herein.

13.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

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

13.22 Special Provisions. The Contract created by this request and the resulting request for qualifications will automatically renew for up to four successive one-year terms, unless the Vendor notifies the Town in writing of its desire to terminate the Contract. If extended, the then-current prices shall be applicable during the subsequent renewal year unless the Vendor notifies the Town in writing of any rate increase and the Town approves the increase with an authorized signature, prior to the end of the then-current term.

[SIGNATURES ON FOLLOWING PAGES]

**TOWN OF FOUNTAIN HILLS
COMMUNITY SERVICES DEPARTMENT
CS2019-006**

APPENDIX 2

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:

Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

Aaron D. Arnson, Town Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 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.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

APPENDIX 2

“Contractor”

a(n) _____

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF _____)
COUNTY OF _____) ss.

On _____, 2018, before me personally appeared _____,
the _____ of _____,
a(n) _____, whose identity was proven to me on the basis of
satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she
signed the above document on behalf of the _____.

Notary Public

(Affix notary seal here)

EXHIBIT A
TO
JOB ORDER MASTER AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND

[SOQ]

See following pages.

DRAFT

EXHIBIT B
TO
JOB ORDER MASTER AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND

[Scope of Work]

See following page(s).

Vendor may be asked to provide some or all of services of installation, demolition, removal and disposal of the following:

- a. Buildings & improvements
- b. Slabs/foundations
- c. Walls/flooring/roofing
- d. Debris
- e. Doors/windows
- f. Canopies/shades
- g. Ramps
- h. Steps
- i. Fences/gates
- j. Playground equipment and surfaces
- k. Sport fields, turf, bleachers and structures
- l. Plumbing/sprinklers
- m. Lighting
- n. All wiring, plumbing, conduit
- o. Fixtures and equipment
- p. Park benches, ramadas and picnic tables
- q. Other construction-related projects and materials as needed

EXHIBIT C
TO
JOB ORDER MASTER AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND

[Sample Job Order]



TOWN OF FOUNTAIN HILLS, ARIZONA
Community Services Department

JOB ORDER

Job Order No. _____
Contract No. _____
Project No. _____

THIS JOB ORDER is made and entered into on the ____ day of _____, 20__, by and between Town of Fountain Hills, an Arizona municipal corporation ("Town") and the "Contractor" designated below. This Job Order is entered in to pursuant to and incorporates herein the terms and provisions of the Job Order Master Contract No. _____, dated _____, 20__, between Town and Contractor ("Master Contract"). Upon full execution of this Job Order, the Job Order, together with the Master Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the construction work specified herein ("Work").

Town and Contractor agree as follows:

TOWN:

Town
Project Manager:
Telephone:
Fax:
E-mail:

CONTRACTOR:

{Name}
{Address}
Arizona ROC No.:
Federal Tax ID No.:
Contractor Representative:
Telephone:
Fax:
E-mail:

DESIGN PROFESSIONAL:

{Name}
{Address}
Design Professional Representative:
Telephone:
Fax:
E-mail:

PROJECT DESCRIPTION:

PROJECT SITE ADDRESS/LOCATION:

SCOPE OF WORK AND PROJECT SCHEDULE/ DURATION:
(Including any Preconstruction and/or Design Services under Article 17)

Attached Exhibit A

CONTRACT PRICE FOR WORK:

_____ The Fixed Price of \$ _____;
or
_____ Guaranteed Maximum Price/GMP (Open Book) of \$ _____

LIQUIDATED DAMAGES (IF ANY): *[PM to Check any that apply]*

_____ Substantial Completion Amount \$ _____/day
_____ Final Completion Amount \$ _____/day
_____ Pursuant to MAG § 108.9

CONTRACTOR'S MARK-UP AND PROJECT SCHEDULE OF VALUES Attached Exhibit B

UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY): Attached Exhibit C

UNIQUE PROJECT SPECIFIC CONDITIONS (IF ANY): Attached Exhibit D

LIST OF PROJECT PLANS AND SPECIFICATIONS (IF ANY): Attached Exhibit E

IN WITNESS WHEREOF, the parties hereto have executed this Job Order through their duly authorized representatives and bind their respective entities as of the effective date.

"Town"
TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

Signature _____
Name _____
Title _____

ATTEST:

Signature _____
Name _____
Title _____

"CONTRACTOR"
[Name]

Signature _____
Name _____
Title _____

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE/DURATION

1. **Scope of Work:**

2. **Schedule:**

EXHIBIT B – CONTRACTOR'S MARK-UP COEFFICIENTS AND PROJECT SCHEDULE OF VALUES

{ To be provided by Contractor for each Job Order in the following form }

Self-Performed work (including any direct purchases or other miscellaneous costs to the JOC) – Mark-up

	Direct Cost of the Individual Project (Delivery Order) Value					
	\$0 - \$49,999	\$50,000 - \$99,999	\$100,000 - \$199,999	\$200,000 - \$499,999	\$500,000 - \$999,999	\$1,000,000 +
Coefficient	<x.xx>	<x.xx>	<x.xx>	<x.xx>	<x.xx>	<x.xx>

Subcontracted Work – Mark-up

	Direct Cost of the Individual Project (Delivery Order) Value					
	\$0 - \$49,999	\$50,000 - \$99,999	\$100,000 - \$199,999	\$200,000 - \$499,999	\$500,000 - \$999,999	\$1,000,000 +
Coefficient	<x.xx>	<x.xx>	<x.xx>	<x.xx>	<x.xx>	<x.xx>

[continued on next page]

Project Schedule of Values
(Sample)

1	GENERAL CONDITIONS			SUB-CONTRACTOR OR SUPPLIER
	PROJECT MANAGER ____ hours per week		\$0.00	
	FIELD SUPERVISION ____ hours per week		\$0.00	
	TEMPORARY FACILITIES (attach a list of specific cost breakdown)		\$0.00	
	SITE SAFETY		\$0.00	
	EQUIPMENT RENTAL (attach a list of specific cost breakdown)		\$0.00	
	PERMITS		\$0.00	
	Sub Total-GENERAL CONDITIONS		\$0.00	
	SUB CONTRACTOR COSTS			
2	SITE WORK		\$0.00	
3	CONCRETE		\$0.00	
4	MASONRY		\$0.00	
5	METALS		\$0.00	
6	WOOD & PLASTICS		\$0.00	
7	THERMAL & MOISTURE PROT.		\$0.00	
8	DOORS & WINDOWS		\$0.00	
9	FINISHES		\$0.00	
10	SPECIALTIES		\$0.00	
11	EQUIPMENT		\$0.00	
12	FURNISHINGS		\$0.00	
13	SPECIAL CONSTRUCTION		\$0.00	
14	CONVEYING SYSTEMS		\$0.00	
15	MECHANICAL		\$0.00	
16	ELECTRICAL		\$0.00	
	Sub Total-SUB CONTRACTOR COSTS		\$0.00	
	SCOPE OF SELF PERFORMED WORK: (describe)			
	LABOR COST for SELF-PERFORMED WORK:		\$0.00	
	MATERIALS COST for SELF-PERFORMED WORK:		\$0.00	
	OTHER MISC COSTS: (describe)			
			\$0.00	
			\$0.00	
	Sub Total-SELF-PERFORMED WORK AND OTHER MISC COSTS		\$0.00	
	ALLOWANCES OR CONTINGENCY AMOUNTS (PROVIDE LIST)		\$0.00	
	GRAND TOTAL		\$0.00	

EXHIBIT C – UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)

{Provide any additional insurance requirements beyond the Standard Insurance Requirements, and/or bond requirements for the Project once approved by _____ to confirm adequate insurance and bond coverages for this Project}

EXHIBIT D – PROJECT SPECIFIC CONDITIONS

{To be completed by PM from the specific Project requirements and specifications}

EXHIBIT E – LIST OF PROJECT PLANS AND SPECIFICATIONS (IF ANY):

{To be completed by PM if applicable}

EXHIBIT D
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND

[Fee Proposal]

See following page(s)

THE TOWN OF FOUNTAIN HILLS
Vendor List CS2019-006

<u>Assigned Contract#</u>	<u>Category</u>	<u>Vendor Name</u>
2019-006U1	UTILITY	Utility Construction Company, Inc
2019-006U2	UTILITY	REDHAWK SOLUTIONS LLC
2019-006S1	STORM CLEAN -UP	T&T Construction, Inc.
2019-006S2	STORM CLEAN -UP	Carume Contracting Quality Construction LLC
2019-006A	GENERAL	Johnson Carlier LLC
2019-006B	GENERAL	GCON INC
2019-006C	GENERAL	CORE Construction, Inc.
2019-006P1	PLAYGROUND	Caliente Construction
2019-006P2	PLAYGROUND	JP and Sons Contracting Inc.
2019-006C1	PAVING & CONCRETE	Vincon LLC
2019-006C2	PAVING & CONCRETE	LAN-CON INC
2019-006C3	PAVING & CONCRETE	Stormwater Plans, LLC dba SWP Contracting and Paving
2019-006F1	FACILITY	FCI Constructors, Inc.
2019-006F2	FACILITY	Hardison/Downey Construction, Inc.
2019-006F3	FACILITY	Builders Guild, Inc. Construction Professionals

"Contractor"

UTILITY CONSTRUCTION COMPANY, INC.,
a(n) Arizona corporation

By: 

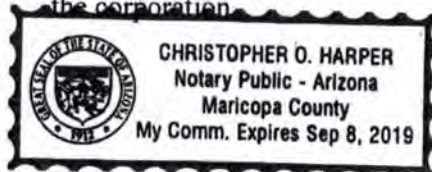
Name: Bob Martin, CCM

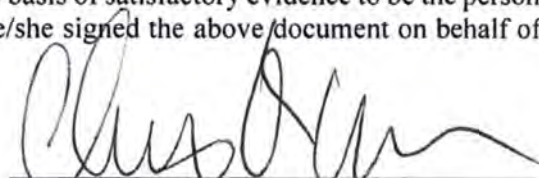
Title: Vice President

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On February 28, 2019, before me personally appeared Bob Martin, the Vice President of UTILITY CONSTRUCTION COMPANY, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.




Notary Public

(Affix notary seal here)

"Contractor"

RED HAWK SOLUTIONS, LLC,
a(n) Arizona limited liability company

By: _____

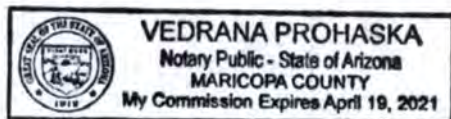
Name: MICHAEL WENDT LALD

Title: 2/28/2019 MANAGING MEMBER

(ACKNOWLEDGMENT)

STATE OF Arizona)
COUNTY OF Maricopa) ss.

On February 28th, 2019, before me personally appeared Michael Wendt Lald
the Managing Member of RED HAWK SOLUTIONS, LLC, a(n) Arizona limited liability
company, whose identity was proven to me on the basis of satisfactory evidence to be the person
who he/she claims to be, and acknowledged that he/she signed the above document on behalf of
the limited liability company.



(Affix notary seal here)

Vedrana Prohaska
Notary Public

"Contractor"

T&T CONSTRUCTION, INC.,
a(n) Arizona corporation

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF Arizona)
COUNTY OF Maricopa) ss.

On March 4th, 2019, before me personally appeared Jerrad Trulson
the President of T&T CONSTRUCTION, INC., a(n) Arizona corporation, whose
identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims
to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Lori A. Swanson
Notary Public

(Affix notary seal here)



"Contractor"

CARUME CONTRACTING QUALITY CONSTRUCTION LLC,
a(n) Arizona limited liability company

By: Tom L Halm Tom L Halm

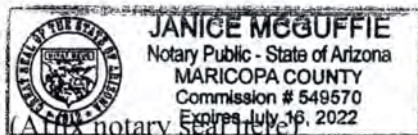
Name: Carume Contracting Quality Construction, LLC.

Title: Owner

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On March 5th, 2019, before me personally appeared _____,
the _____ of CARUME CONTRACTING QUALITY CONSTRUCTION
LLC, a(n) Arizona limited liability company, whose identity was proven to me on the basis of
satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she
signed the above document on behalf of the limited liability company.



Janice McGuffie
Notary Public

"Contractor"

JOHNSON CARLIER LLC

a(n) Arizona limited liability company

By: _____

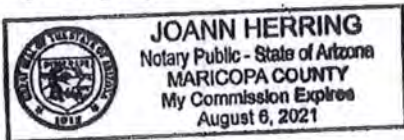
Name: Thomas H. Harrison

Title: Senior Vice President / Managing Director

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On March 1, 2019, before me personally appeared Tom Harrison the Sr. VP of JOHNSON CARLIER LLC, a(n) Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the limited liability company.



Joann Herring
Notary Public

(Affix notary seal here)

"Contractor"

GCON, INC.
a(n) Arizona corporation

By: _____

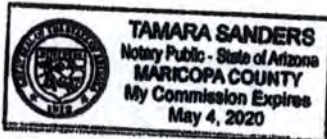
Name: Tiffany Fisher

Title: Director of Public Works

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On February 28, 2019, before me personally appeared Tiffany Fisher the Director of Public Works of GCON, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.



(Affix notary seal here)

Tamara Sanders
Notary Public

"Contractor"

CORE CONSTRUCTION, INC.
a(n) Arizona corporation

By: Todd Steffen

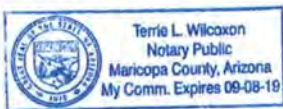
Name: Todd Steffen

Title: President

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On March 6, 2019, before me personally appeared Todd Steffen, the
President of CORE CONSTRUCTION, INC., a(n) Arizona corporation, whose
identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims
to be, and acknowledged that he/she signed the above document on behalf of the corporation.



(Affix notary seal here)

Terrie L. Wilcoxon
Notary Public

"Contractor"

CALIENTE CONSTRUCTION, INC.,
a(n) Arizona corporation

By: Lorraine Bergman

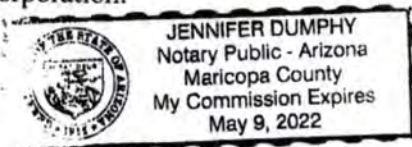
Name: Lorraine Bergman

Title: President/CEO

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On February 28, 2019, before me personally appeared Lorraine Bergman, the President of CALIENTE CONSTRUCTION, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.



(Affix notary seal here)

[Signature]
Notary Public

"Contractor"

J.P. & SONS CONTRACTING, INC.
a(n) Arizona corporation

By: J.P. Perkins Jr

Name: Joseph P Perkins Jr

Title: Pres.

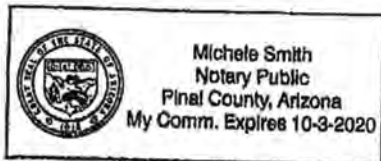
(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Pinal)

On February 28, 2019, before me personally appeared Joseph Perkins Jr, the President of J.P. & SONS CONTRACTING, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Michele Lichtman FKA Michele Smith
Notary Public

(Affix notary seal here)



"Contractor"

VINCON ENGINEERING CONSTRUCTION, LLC
a(n) Arizona limited liability company

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF Arizona)
COUNTY OF Maricopa) ss.

On February 28, 2019, before me personally appeared Jeffrey A. Keir, the Member of VINCON ENGINEERING CONSTRUCTION, LLC, a(n) Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the limited liability company.

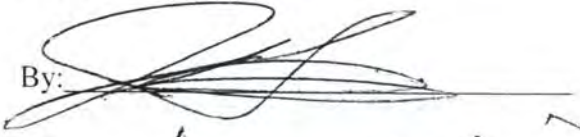


(Affix notary seal here)

Notary Public

"Contractor"

LAN-CON, Inc.,
a(n) Arizona corporation

By: 

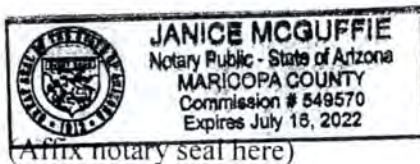
Name: James F. Giordano

Title: President

(ACKNOWLEDGMENT)

STATE OF Arizona)
COUNTY OF Maricopa) ss.

On March 4, 2019, before me personally appeared James Giordano the President of LAN-CON, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.




Notary Public

"Contractor"

STORMWATER PLANS, LLC,
DBA SWP CONTRACTING & PAVING,
a(n) Arizona limited liability company

By: _____

Name: James Erickson

Title: Managing Member Representative

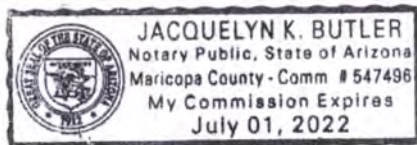
(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On February 28, 2019, before me personally appeared James Erickson, the
Managing Member Representative of STORMWATER PLANS, LLC, DBA SWP CONTRACTING &
PAVING, a(n) Arizona limited liability company, whose identity was proven to me on the basis
of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she
signed the above document on behalf of the limited liability company.

Jacquelyn K. Butler
Notary Public

(Affix notary seal here)



"Contractor"

FCI CONSTRUCTORS, INC.
a(n) Colorado corporation

By: *J. M. Eades*

Name: JEFF EADES

Title: VICE PRESIDENT

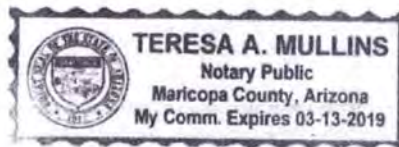
(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On March 5., 2019, before me personally appeared Jeff Eades,
the Vice President of FCI CONSTRUCTORS, INC., a(n) Colorado corporation, whose
identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims
to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Teresa A. Mullins
Notary Public

(Affix notary seal here)



"Contractor"

HARDISON/DOWNEY CONSTRUCTION, INC.
a(n) Arizona corporation

By: Heather Marin

Name: HEATHER MARIN

Title: Vice President of Operations

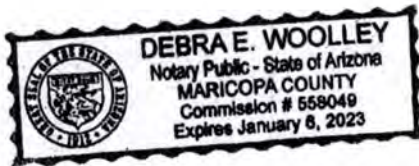
(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On March 6, 2019, before me personally appeared Heather Marin
the V.P. of Operations of HARDISON/DOWNEY CONSTRUCTION, INC., a(n) Arizona
corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person
who he/she claims to be, and acknowledged that he/she signed the above document on behalf of
the corporation.

Debra E. Woolley
Notary Public

(Affix notary seal here)



"Contractor"

BUILDERS GUILD, INC.
a(n) Arizona corporation

By: Kathryn B Carter

Name: Kathryn B. Carter

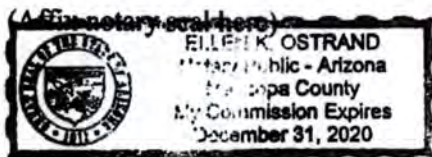
Title: President

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

On February 27, 2019, before me personally appeared Kathryn B Carter, the President of BUILDERS GUILD, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Ellen K Ostrand
Notary Public





TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019
Agenda Type: Regular

Meeting Type: Regular Session
Submitting Department: Public Works

Staff Contact Information: Justin T. Weldy, jweldy@fh.az.gov, 480-816-5133

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF approving the third Amendment to Cooperative Purchase Agreement C2017-045 between M. R. Tanner Development and Construction, Inc. and the Town of Fountain Hills for asphalt replacement and miscellaneous work in an amount not to exceed \$8,500,000

Applicant: NA

Applicant Contact Information: NA

Owner: NA

Owner Contact Information: NA

Property Location: NA

Related Ordinance, Policy or Guiding Principle: NA

Staff Summary (background): On December 5, 2017, Mayor and Town Council approved a contract with IMS Infrastructure Management Services, LLC, to provide a pavement analysis and mapping of the Town's roadway network. The results of the pavement analysis were presented to Mayor and Council at a special session on April 17, 2018. At the November 20, 2018, Council meeting staff presented the Fiscal Year 18-19 and 19-20 pavement management plan.

The request before you tonight to approve the contract amendment will allow staff to proceed with the Fiscal Year 18-19 and 19-20 paving projects.

The funding for this amendment includes unspent paving funds from Fiscal Year 17-18, the balance from Fiscal Year 18-19 and funding requested for Fiscal Year 19-20.

Risk Analysis (options or alternatives with implications): NA

Fiscal Impact (initial and ongoing costs; budget status): \$8,500,000 \$12,796,753.59

Budget Reference (page number): 281

Funding Source: Highway User Revenue Fund

If Multiple Funds utilized, list here: NA

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): NA

Staff Recommendation(s): Approval of the Third Amendment to Cooperative Purchasing Agreement C2017-045.

List Attachment(s): Third amendment to Contract C2017-045

SUGGESTED MOTION (for Council use): Move to approve the third Amendment to Cooperative Purchase Agreement C2017-045 between M.R. Tanner Development and Construction, Inc. and the Town of Fountain Hills for asphalt replacement and miscellaneous work, in an amount not to exceed \$8,500,000.00

Prepared by:

Justin Weldy, Public Works Director

2/8/2019

Director's Approval:

Justin Weldy, Public Works Director

2/8/2019

Approved:



Grady E. Miller, Town Manager

3/6/2019

**THIRD AMENDMENT
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
M.R. TANNER DEVELOPMENT AND CONSTRUCTION, INC.**

THIS THIRD AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this "Third Amendment") is entered into as of March 19, 2019, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and M.R. Tanner Development and Construction, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Chandler, Arizona entered into Contract No. ST5-745-3478, dated February 13, 2015, as amended by Amendment No. 1, dated January 22, 2016, by Amendment No. 2, dated January 19, 2017, by Amendment No. 3, dated January 26, 2018, and by Amendment No. 4, dated December 14, 2018 (collectively, the "City Contract"), with the Contractor for the Contractor to provide street replacement and asphalt mill and overlay. The City Contract is attached hereto as Exhibit A and is incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town and the Contractor entered into a Cooperative Purchasing Agreement dated September 15, 2016 (the "Initial Agreement"), and based upon the City Contract, for the Contractor to provide the Town with street replacement and asphalt mill and overlay (the "Materials and Services").

C. The Initial Agreement was amended by that First Amendment, dated November 21, 2017, and that Second Amendment, dated March 6, 2018, to purchase additional Materials and Services and to extend the term of the Agreement. The Initial Agreement and First and Second Amendments are collectively referred to herein as the "Agreement." All capitalized terms not otherwise defined in this Third Amendment have the same meanings as contained in the Agreement.

D. The Town has determined that it is necessary for the Contractor to perform additional street replacement and asphalt mill and overlay services (the "Additional Materials and Services") and that it is necessary to extend the term of the Agreement and provide additional compensation for the provision of the Additional Materials and Services.

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 Contractor hereby agree as follows:

1. Term of Agreement. The Term of the Agreement is hereby extended and shall remain in full force and effect until March 19, 2020, unless terminated as otherwise provided pursuant to the terms of the Agreement.

2. Scope of Work. Contractor shall provide the Additional Materials and Services (i) under the terms and conditions of the City Contract and (iii) pursuant to instructions from the Town and as may be agreed upon by the Parties.

3. Compensation. The Town shall increase the compensation to Contractor by not more than \$8,500,000.00 for the Additional Materials and Services at the rates set forth in the City Contract and more particularly in the Proposal, resulting in an increase of the aggregate not-to-exceed compensation from \$4,296,753.59 to \$12,796,753.59.

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

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

With copy to: Pierce Coleman PLLC
4711 East Falcon Drive, Suite 111
Mesa, Arizona 85215
Attn: Aaron D. Arnson, Town Attorney

If to Contractor: M.R. Tanner Development and Construction, Inc.
1327 West San Pedro Street
Gilbert, Arizona 85233
Attn: Kevin Day

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.

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

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

7. Israel. Contractor 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.

8. Conflict of Interest. This Third Amendment and the Agreement may be cancelled by the Town pursuant to Ariz. Rev. Stat. § 38-511.

[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

CR
2/28/19

Grady E. Miller, Town Manager

ATTEST:

Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

Aaron D. Arnson, Town Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2019, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Contractor"

M.R. TANNER DEVELOPMENT AND CONSTRUCTION, INC.
a(n) Arizona corporation

By: _____

Name: GREGORY J. MARSH

Title: CORPORATE PRESIDENT

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On 02-28, 2019, before me personally appeared GREGORY J. MARSH, the CORP. PRESIDENT of M.R. TANNER DEVELOPMENT AND CONSTRUCTION, INC., a(n) Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Roxanne Baker
Notary Public

(Affix notary seal here)

4831-3569-5240 v.1

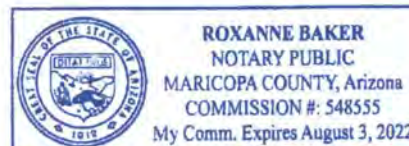


EXHIBIT A
TO
COOPERATIVE PURCHASE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
M.R. TANNER DEVELOPMENT AND CONSTRUCTION, INC.

[City Contract]

See following pages.



CONTRACT/GRANT INFORMATION SHEET - AMENDMENT

Date: 2/8/2019			
Staff's Name: Justin Weldy		Department: Public Works	
Vendor's Name: M.R. Tanner Dev. & Construction		Vendor Number:	1467
Address: 1327 West San Pedro. Gilbert AZ 85233			
Phone: 480-633-8500			
Received W9: ☐ Y ☐ N ☒ ALREADY IN SYSTEM			
Business License #: 96		Exp. Date: 11/30/2019	

ACCOUNTING SUMMARY	Org	Object	Project/#	\$
Accounting Code:	STPAVE	6276		8,500,000
Accounting Code:				
Accounting Code:				
TBD(used for variety of different things/departments/funds):	Choose an item.			

CONTRACT SUMMARY

Contract Number Assigned:	C2017-045.3		
Contract Total:	\$8,5000,00		
Brief Description of Service:	Asphalt Mill & Overlay		
If Renewable:	#3	Total # of Renewals Max:	1
FY Cumulative Vendor Totals:	Does this Contract put it over \$30,000	☒ Yes	☐ No
Contract Beginning Date:	3/19/2019		
Contract Expiration Date:	3/19/2020		
Budgeted Expenditure:	☒ Yes	☐ No	
Budget Page #:	284		
Approved by Council:	☒ Yes; Date: 3/19/2019	☐ No	☐ N/A
Insurance Certificate provided:	☒ Yes	☐ No	☐ N/A
Warranty Period:	☐ Yes	☒ No	If Yes, expires Click here to enter a date.
Estimated Start Date:	3/19/2019		
Estimated Completion Date:	3/19/2020		

GRANT SUMMARY

Paid for by Grant:	☐ Yes	☐ No
Name of Grantee:		
Grant Number Assigned:		Resolution Number:
Date Council Approved:		

REQUEST FOR LEGAL SERVICES

Name/Phone Number/E-mail of Requestor: Justin T. Weldy, jweldy@fh.az.gov, 480-816-5133	Date of Request: 2/8/2019 Date Director Approved Request: 2/8/2019
Procurement Approval by: Craig Rudolph 2/11/2019 Yes ☒ No ☐ - Contact Finance Director	Due Date (From Town Attorney's office): 2/25/2019 - Deadline for return of request from Legal is 10 business days after Procurement Approval. - Deadline for completed packet items submitted to the Town Clerk - 12 PM the Wednesday 2 weeks prior to the date of the Council meeting.
Council Meeting Date: 3/5/2019 Item <u>does not</u> require Council approval ☐	
Request for Legal staff: Prepare Amendment number three for Cooperative Purchase agreement C2017-045 with M.R. Tanner for asphalt mill and overlay based on City of Chandler contract ST5-745-3498	
Proposed Agenda Language (if applicable): Consent Agenda Item ☐ Regular Agenda Item ☒ CONSIDERATION of <u>approving the third Amendment to Cooperative Purchase Agreement C2017-045 between M. R. Tanner Development and Construction, Inc. and the Town of Fountain Hills for asphalt replacement and miscellaneous work in an amount not to exceed \$8,500,00.00.</u>	
Vendor/Consultant/Agreement/Agency Information: Contact Name: <u>Kevin Day</u> Entity Name: <u>MR Tanner Development and Construction, Inc.</u> Entity Address: <u>1327 W. San Pedro St., Gilbert, AZ 85233</u> Entity Phone, Fax and E-mail address: <u>480-633-8500, kday@mrtanner.com</u> Town of Fountain Hills Business License Number: <u>96</u> Arizona Corporation Commission File Number: <u>07675050</u>	
Documents Requested: ☐ Ordinance # _____ (Draft attached Y / N) Publication Dates for Zoning Actions: _____ ☐ Resolution # _____ (Draft attached Y / N) ☐ Easement _____ (Specify Type) ☐ Deed _____ (Specify Type) ☐ IGA / Amendment (Corresponding Resolution Required) ☐ PSA / Amendment	☐ PA (Purchase) / Amendment ☐ IFB (Invitation for Bid) ☐ RFQ (Request for Qualifications) ☐ RFP (Request for Proposals) ☐ CSA (Construction) / Amendment ☐ QSP _____ ☒ Cooperative Purchasing Agreement Approval <u>Amendment</u> ☐ Other _____
Required Contract/Agreement Information: Method of Vendor Selection: <u>Cooperative Purchase Agreement</u> Term of Contract/Agreement: <u>1 year</u> Contract Amount (this contract): <u>8,500,000</u> Cumulative Contract Amount: <u>12,796,753.59</u> Brief description of services/goods being sought: <u>Asphalt mill & overlay</u> Contract # assigned: <u>C2017-045</u> Funding Source: <u>HURF</u> Project No. _____ Budget Transfer Required: <u>NA</u> ; if yes, attach appropriate documentation	
Staff Check List: A "request for legal services form" will be returned if submitted without the necessary information and attachments. *Scope of Work or Specifications Attached *Fee Proposal or Price Sheet Attached *Proposal or Statement of Qualifications from Vendor Attached *Bid/RFQ/RFP Schedule Attached *QSP Document Attached *Underlying Cooperative Purchasing Agreement Attached	



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 3/19/2019

Meeting Type: Regular Session

Agenda Type: Regular

Submitting Department: Administration

Staff Contact Information: Grady E. Miller, Town Manager

REQUEST TO COUNCIL (Agenda Language): DISCUSSION WITH POSSIBLE DIRECTION TO STAFF regarding amending or repealing the Public Art Ordinance relating to public art fees.

Applicant: N/A

Applicant Contact Information: N/A

Owner: N/A

Owner Contact Information: N/A

Property Location: N/A

Related Ordinance, Policy or Guiding Principle: Public Art Ordinance

Staff Summary (background): Councilmember Dennis Brown, Councilmember Sherry Leckrone, and Vice Mayor Art Tolis have requested that the Mayor and Council consider making changes to the Public Art Ordinance as it relates to the public art fees. The public art ordinance was originally adopted by the Town Council in 2007 and requires developers to pay one percent of the project value on all commercial and multifamily developments; or with the recommendation of the public art committee and approval of the Town Council, developers can purchase and install public art as part of their developments. The Town Council previously discussed the need to re-evaluate the public art program and more specifically, the public art fees assessed on development projects.

Most of the public art in the town's municipal art collection is the result of the Public Art Committee securing donations of public art as well as fundraising for specific pieces to add to the collection. Only during the past few years has the public art fees generated significant funding levels for the acquisition of public art.

The Town Council is being asked to determine if the public art program needs to be re-evaluated as it relates to the fees charged for development projects. If the Town Council determines that it wishes to amend or repeal the public art ordinance relating to fees, then it will require a text amendment to the zoning ordinance. If the Town Council wishes to go down this path, then the Town Council will need to direct staff to move forward with the process for a text amendment. A text amendment will require advertising and will go before the Planning and Zoning Commission before the Town Council can act on the recommended text amendment to the zoning ordinance.

Risk Analysis (options or alternatives with implications): N/A

Fiscal Impact (initial and ongoing costs; budget status): N/A

Budget Reference (page number): N/A

Funding Source: NA

If Multiple Funds utilized, list here: N/A

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): N/A

Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s): That the Town Council provide direction to staff on how it wishes to address this subject.

List Attachment(s): Public Art Ordinance, Public Art Guidelines, Meeting Minutes

SUGGESTED MOTION (for Council use): Move to provide staff direction regarding amending or repealing the Public Art Ordinance relating to public art fees through the zoning text amendment process.

Prepared by:

NA Date

Approved:



Grady E. Miller, Town Manager 3/11/2019

Director's Approval:

NA Date

ORDINANCE NO. 06-23

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING THE "COMMERCIAL/MULTI-FAMILY ARCHITECTURAL DESIGN REVIEW GUIDELINES" BY REFERENCE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. That certain document known as the "Commercial/Multi-Family Architectural Design Review Guidelines" (the "Design Review Guidelines"), three copies of which are on file in the office of the Town Clerk of the Town of Fountain Hills, which document was made a public record by Resolution No. 2006-59 of the Town of Fountain Hills, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 2. That the Design Review Guidelines shall be inserted into the Zoning Ordinance for the Town of Fountain Hills as a new Chapter 19, Commercial/Multi-Family Architectural Design Review Guidelines.

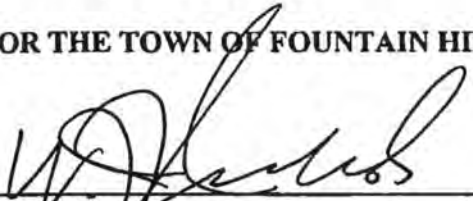
SECTION 3. That any person found guilty of violating any provision of the Design Review Guidelines shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

SECTION 4. That, if any section, subsection, sentence, clause, phrase or portion of this Ordinance or the Design Review Guidelines is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the Design Review Guidelines.

[SIGNATURES ON FOLLOWING PAGE]

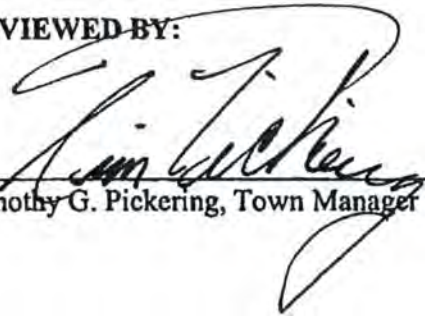
PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills,
Arizona, December 7, 2006.

FOR THE TOWN OF FOUNTAIN HILLS:



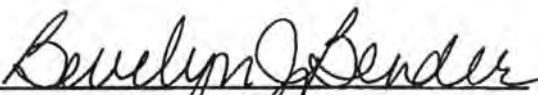
W. J. Nichols, Mayor

REVIEWED BY:



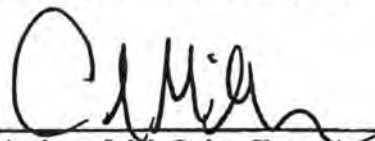
Timothy G. Pickering, Town Manager

ATTESTED TO:



Bevelyn J. Bender, Town Clerk

APPROVED AS TO FORM:



Andrew J. McGuire, Town Attorney

RESOLUTION NO. 2006-59

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE "COMMERCIAL/MULTI-FAMILY ARCHITECTURAL DESIGN REVIEW GUIDELINES."

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

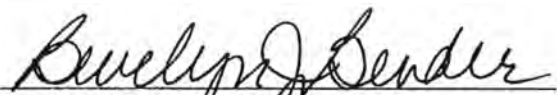
SECTION 1. That certain document entitled the "Commercial/Multi-Family Architectural Design Review Guidelines" of which three copies each are on file in the office of the Town Clerk and open for public inspection during normal business hours, is hereby declared to be public record, and said copies are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, December 7, 2006.

FOR THE TOWN OF FOUNTAIN HILLS:

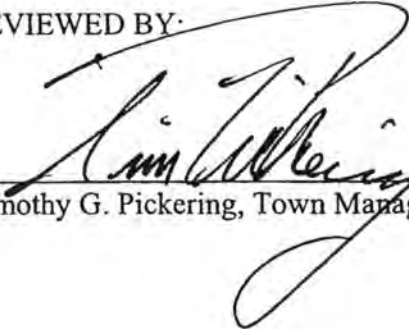
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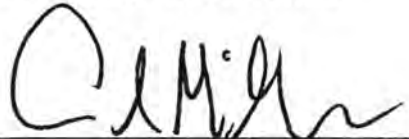

W. J. Nichols, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Timothy G. Pickering, Town Manager


Andrew J. McGuire, Town Attorney

Chapter 19

ARCHITECTURAL REVIEW GUIDELINES

Sections:

- 19.01 PURPOSE AND INTENT.**
- 19.02 APPLICABILITY.**
- 19.03 SITE PLANNING.**
- 19.04 ARCHITECTURE.**
- 19.05 LANDSCAPING & SIGNAGE.**
- 19.06 MATERIAL & COLORS.**
- 19.07 ADMINISTRATION.**

Section 19.01 Purposes and Intent

The Town of Fountain Hills has a desire to continually upgrade commercial, industrial and multi-family projects and has identified a number of characteristics to achieve the objective. The guidelines in this document are to advise developers, property owners and users on the criteria that will be used in reviewing commercial development plan applications.

The guidelines set forth herein are purposefully general in nature and avoid dictating specific design treatment although the preference is to encourage projects that support styles associated with the southwest environment. The belief is that creativity and design expertise lies more appropriately with the private sector and that the proper role of the Town is to ensure uniform and fair application of these design guidelines.

These guidelines are applicable for commercial, industrial and multi-family projects. Because of the extreme variance in the size and nature of such projects, it is not possible to develop a list that can be used for every site. Therefore, not all of these guidelines will apply to every application. Some guidelines describe situations that will only occur in large projects and will clearly not be applicable to small projects on small parcels. Other guidelines will only be used for specific types of commercial uses or at specific locations. However, most of these guidelines can still be achieved, regardless of project size, type or location.

Section 19.02 Applicability

- A.** All proposed retail, service, commercial, wholesale, transportation, industrial or multi-family developments, re-developments or expansions, which are subject to site plan review, a Special Use Permit or a Concept Plan review pursuant to the provisions of Chapter 2 shall be subject to Design Review and approval by the Planning & Zoning Commission prior to the issuance of any Special Use Permit or Building Permit in connection with such development, re-development or expansion. Likewise, prior to the issuance of a Certificate of Occupancy, all conditions of said Design Review and approval must be met.
- B.** The Design Review requirements established by this Chapter shall not apply to any development that, prior to the effective date of this chapter, has been authorized by the Town by the issuance of an approved building permit. However, any extension or amendment to

said permit prior to the completion of construction shall require Design Review approval as above.

- C. Where an existing building or site that is being added to or externally remodeled does not currently meet these design guidelines, the project shall conform to these guidelines to the extent practical given the nature and extent of the alteration.

Section 19.03 Site Planning

- A. **Integrate with surrounding area:** To the extent possible and where land use and street patterns allow, integrate project with adjacent areas to provide easy pedestrian and vehicular access. New developments will be reviewed with respect to their response to the physical characteristics of the site and the contextual influences of the surrounding area. Drive-through uses shall be located to minimize conflicts with pedestrian routes and overall vehicular circulation and adequate stacking for the intended use shall be provided (minimum of 11 vehicles). Where practical, provide pedestrian and vehicular connections to/from existing commercial uses. Applicants shall submit a photographic or computer-generated, full-color illustration showing the proposed development (in at least four different views) as it would appear if constructed as proposed. The proposed development and landscaping, as well as the immediately surrounding buildings and landscaping, must be shown.
- B. **Create a pedestrian-oriented environment:** Create a pedestrian-oriented environment within projects with usable outdoor areas. Provide safe walkways separated from vehicles and protected from weather through the use of covered walkways, arcades or other methods that may serve the same purpose. Minimize the use of driveways and parking aisles for walk routes. Where pedestrian paths cross vehicular routes, provide a change in paving materials, textures or colors to emphasize the conflict points. Create continuous pedestrian activity in an uninterrupted sequence by minimizing gaps between buildings. Entries that face onto outdoor dining opportunities and storefront windows that attract pedestrian activity are encouraged.
- C. **Provide reasonable parking and vehicular circulation:** Provide parking that creates reasonable walking distances to buildings, but not directly abut buildings. Preference will be given to layouts where parking areas are divided from one another by landscaping. Where possible, vary the direction of parking aisles or angle them to the street. To reduce impeding overall traffic flow, parking spaces shall

not directly access major entry drives, unless no other drive serves the property. On large lots, traffic calming devices are encouraged to enhance safety. Parking lots and future parking structures shall be located to the rear of buildings whenever reasonable. Adjacent parking lots shall be designed so that vehicles can travel from one private lot to the other (reciprocal access) without having to enter the street.

- D. Avoid monotony:** Projects with more than one building or with a single building over 20,000 SF in size shall create different angles of buildings to the street to avoid monotony in site design unless other architectural treatments can achieve the desired result. Avoid leveling large areas, as natural contouring is preferred.
- E. Separate uses:** Physical separation of loading/delivery/service uses from other uses is suggested. Loading and storage facilities shall be located at the rear or side of buildings and screened from public view. Design solutions should minimize visual impacts of uses and provide an attractive appearance. Loading areas should not detract from the aesthetic quality of the surroundings, even in parking areas or at the rear of buildings.
- F. Create attractive appearance:** Create attractive appearance by emphasizing the views of landscaping and buildings and by minimizing the view of parking areas and vehicles. Locate delivery areas and support services (trash receptacles and ground-mounted equipment) in screened and less visible places. Provide long-term storage of shopping carts either within the tenant space or adjacent to it, behind decorative screening walls exceeding the height of the carts. Provide parking lot shopping cart corrals using durable, decorative materials that compliment the building design; avoid using striped parking spaces for corrals. Open space areas shall be clustered into larger, more meaningful areas rather than equally distributing them into smaller individual areas of lesser significance.
- G. Identify outdoor sales areas:** Permanent outdoor sales along sidewalks, in parking areas and landscaped zones are discouraged. However, when the activity such as walk-up ATM's, propane sales, vending machines, outdoor dining and seasonal sales are essential to the business, the locations shall be identified as part of the site plan.

Section 19.04 **Architecture**

- A. Create visual interest:** Create visual interest through distinctive structures, articulation of wall planes, variation of roof forms and other similar methods such as angling buildings. Building elevations and materials should have design characteristics that are contextually appropriate (massing, rhythm, scale, height, roof form, etc.). Building mass should be broken into smaller elements to reduce the apparent bulk of large structures, consistent with the proportions of the architectural style and surrounding uses. Where contrasting design elements are proposed, the applicant must demonstrate how the design is equal or superior to surrounding uses. All sides of buildings that are visible to adjoining uses shall be treated.
- B. Provide different elements:** All buildings should contain color change that is recognizable, but not strongly contrasting, with texture and material changes at appropriate intervals, either horizontally or vertically. Predominant façade colors should possess low reflectivity characteristics. The use of bright color schemes must be justified and may not be appropriate in many contexts. It is desirable that the spacing of elements in facades be varied rather than repetitive, with a high priority placed on the three (3) dimensional interplay of light and shadow. A minimum of three colors and/or textures must be incorporated in designs.
- C. Enhance energy conservation:** Where feasible, use architectural features to enhance energy conservation. Orient and design new structures and additions for minimum solar gain, reflectivity and glare. Shelter entries, walkways and windows and use architectural shading devices and landscaping to minimize cooling losses. Mitigate urban heat island effects. Provide ample shade for pedestrians and employee areas. Misting systems and canopies may be considered when consistent with the design character of the building. Awnings shall respond to the scale, proportion and rhythm of windows and doors.
- D. Provide open design:** Building designs should support pedestrian activity and provide natural surveillance of spaces from key locations inside and next to buildings with the appropriate placement of windows, entrances and lighting. Employee service doors shall be equipped with a security device or vision panel to allow viewing of the area surrounding the service door. Permanent, fixed security grates or grilles in front of windows are discouraged. If security grilles are

deemed necessary, they shall be placed inside the building, behind the window display area.

- E. Provide accessibility:** Buildings should be accessible for every person, consistent with the Americans with Disability Act and its implementing standards and guidelines. Additional consideration should be given to including extra sidewalk widths, physical cues and limited audio distractions for the visually impaired. Minimize surface texture and elevation changes for persons using wheelchairs.
- F. Conceal utilities, equipment and services:** All roof-mounted mechanical equipment shall be concealed on all sides by elements that are an integral part of the building design. Ground-mounted equipment shall be screened using masonry walls or other similar materials. Equipment that cannot be concealed due to unique functional requirements shall be made visually subordinate with architectural features that blend with the design of the main building. Electrical service panels shall be recessed into the building elevation and screened with landscaping, walls or doors. Vacuum tubes shall be internalized or placed underground. Roof drain elements shall be concealed within the building or an architectural feature.
- G. Avoid standardized corporate design themes:** Any literal transplant of architectural styles not indigenous or compatible to the southwest environment is strongly discouraged. To the extent possible, corporate branding should be incorporated into designs compatible with the surrounding area.
- H. Provide compatible infill structures:** New infill and/or renovations to existing structures must be compatible with existing surrounding buildings in terms of mass, scale, height, façade rhythm, placement of doors and windows, color, roof shapes and use of materials without duplicating outdated architectural styles. When a new or infill building is proposed that is much wider than the characteristic facades of adjacent buildings, the facade shall be broken down into series of appropriately proportioned "structural bays" or components. Typical solutions are segmented bay series of columns or masonry piers that frame windows, doors and bulkhead components. Long blank or unarticulated wall facades that face the street are strongly discouraged.

Section 19.05 Landscaping & Signage

- A. Provide landscaping features:** Along streets, provide substantial landscaping features with special planting and hardscape treatment to enhance the appearance from the street. Emphasize entry drives with landscaped medians, sculptures or other similar treatments that maintains site visibility for vehicular traffic. Provide special accent planting around freestanding signs. Abide by the landscaping requirements in the Town's Zoning and Subdivision Ordinances, wherein the minimum quantity and types of plantings are outlined.
- B. Encourage pedestrian use:** Provide outdoor seating areas with summer shade, trash receptacles and other features to encourage pedestrian use. Orient outdoor seating areas for winter sun and include seasonal plantings. Incorporate a mix of structures such as colonnades, canopies or trellis structures in combination with desert varieties of canopy shade trees.
- C. Provide for water conservation:** Select plant materials that are suited for our desert environment; xeriscape should be considered for planting areas. Drought-tolerant trees, shrubs and groundcovers shall be used as required in this Ordinance. Use a combination of plants for yearlong color and interest. Retain natural vegetation and incorporate it into the project whenever practical. Any proposed water features should be located in pedestrian areas.
- D. Integrate visual relief:** In large parking areas, provide canopy trees for shade and visual relief. Provide significant plantings adjacent to buildings to accent building features. Use landscape treatments to enhance the screening of outdoor storage and mechanical equipment areas. Screen the paved areas of vehicle-intense uses, such as service stations and convenience stores, from streets and major public use areas with a three (3) foot high wall (with accompanying vegetation) or a dense vegetative buffer.
- E. Provide textured walls:** All masonry walls intended for screening functions shall have an architectural texture, color and finish compatible with the primary building.
- F. Provide storm water detention:** Design retention areas to meet technical requirements, as approved by the Town Engineer, while still providing attractive landscaped areas with a natural appearance.

- G. Integrate signage:** Locate freestanding signs on low planter walls or design monument signs to incorporate distinctive elements of the architectural style or theme of the development. Façade sign materials shall be compatible with the design of the face of the façade where they are placed. Signs shall not interfere with an already established pattern of sign locations in relation to where other adjacent buildings have placed their signs. Directional signs shall be harmonious with the area. Provide building signage that is proportional to the scale of the tenant façade and consistent with the overall architecture. Sign colors should compliment the colors used on the structures and the project as a whole; contrast is an important influence on the legibility of signs. Provide signage plans showing the proposed locations and materials of all signs. Master signage plans are encouraged for multi-tenant developments. All signage shall comply with the provisions of Chapter 6 of this Zoning Ordinance.
- H. Provide appropriate lighting:** Lighting should enhance the architecture of a project, comply with Chapter 8 of this Ordinance, be functional and not be offensive to its viewers or to adjacent properties. Lighting practices, including indirect lighting to minimize light pollution, glare and light trespass are strongly encouraged. Provide a complete site lighting plan including security lighting; include information on all specific light fixtures as well as locations and illumination levels in accordance with the provisions of this Zoning Ordinance.
- I. Public Art Requirement:**
- 1.** All development proposals subject to Design Review under this Chapter shall be required to provide one of the following prior to the issuance of a Certificate of Occupancy:
 - a.** Exterior public art of an appraised or invoiced value equal to or greater than 1% of the cost of building construction and associated site work and signage. Water features using recycled water are preferred; or
 - b.** A donation to the Fountain Hills Public Art Fund in an amount equal to or greater than 1% of the cost of building construction and associated site work and signage.
 - 2.** The value of construction costs will be determined by the Town using standard valuation procedures at the time of application.

3. Applicants are encouraged to meet with the Fountain Hills Cultural Council for recommendations when considering exterior public art selections.

Section 19.06 Materials and Colors

- A. **Use high-quality, durable materials:** Predominate exterior building materials should include, but are not limited to: stucco, brick, stone, textured masonry, styled concrete masonry units, textured tilt-up panels, architectural metal, clear and tinted glass, clay tile roofs and other building and roof materials of similar quality and durability.
- B. **Provide palette of proposed materials and colors:** With the development application provide a palette of proposed materials and colors. Select materials that are durable and appropriate for their intended use. Choose colors that relate well to one another and the surroundings. Restraint should be used in the number of different building materials selected.
- C. **Use natural materials:** Use natural materials appropriate to the southwest desert setting. Wood should not be used as an exterior finish, except as a trim component. The use of authentic adobe bricks or stucco in projects with a southwestern theme is encouraged.
- D. **Avoid highly reflective materials:** Avoid highly reflective materials and glare-inducing colors. As a general principle, coarse and highly textured materials that create shadow patterns are preferred. To reduce glare, windows and large areas of glass should be recessed in deep shadow. In order to reduce mirror effects, glass must be non-reflective and not heavily tinted.
- E. **Discouraged exterior finishes:**
 1. Colored plastics and fiberglass.
 2. Exposed unfinished foundation walls.
 3. Un-plastered exposed standard concrete masonry units.
 4. Glass curtain walls; highly reflective glass.
 5. Shiny acrylic and fluorescent paint finishes.

6. Dark colors, except where appropriately utilized on trim.
7. Wood, except as a trim material.
8. Pre-fabricated steel panels.
9. Corrugated metal.
10. Asphalt shingles.

F. Encouraged surface materials:

1. Interlocking pavers.
2. Stamped and/or colored and textured concrete.
3. Matte finishes.

Any proposal that indicates specialty surface materials other than concrete or asphalt to be located within a public right-of-way or located on public property must contain an agreement, executed by the property owner, that such areas will be (a) privately maintained, (b) insured, including indemnity to the Town, in an amount and a form acceptable to the Town Attorney and (c) replaced when necessary.

- G. Select environmentally sensitive colors:** The primary colors should be sensitive to the colors found in the area's natural environment. The appropriateness of any given color shall depend on a number of factors including adjacent buildings. Bright or intense colors are discouraged, unless used on appropriate architectural styles and reserved for more refined detailing and transient features; colors must be harmonious with colors found on adjacent buildings. Appropriate varying colors can be used to articulate and reduce the apparent scale of building masses. Projects shall not be painted with a single color when such project contains (1) more than one building, (2) any multi-story building(s) and (3) any single building in excess of 20,000 SF in size.

Section 19.07 Administration

- A. When exercising its powers of Design Review under this section, the Planning & Zoning Commission shall hold concurrent hearings with the Concept Plan review. All reviews, hearings and decisions shall be completed in conjunction with the Concept Plan review, unless specifically requested otherwise by an applicant.
- B. **Interpretation & Enforcement:** The Zoning Administrator is charged with the responsibility of interpretation and enforcement of this Chapter. Interpretation of this Chapter includes, but is not limited to, clarification of intention and the delegation of processing procedures and requirements.
- C. **Appeals:** Any applicant may appeal a decision of the Planning & Zoning Commission to approve, conditionally approve or deny an application for Design Review under this Chapter to the Town Council. Said appeal shall be filed within 30 days of the date the decision was rendered by the Planning and Zoning Commission.

ORDINANCE NO. 12-04

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 19, SECTION 19.05, BY REVISING THE PROVISIONS RELATED TO PUBLIC ART DONATIONS.

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council") approved Ordinance No. 93-22, which adopted the Zoning Ordinance for the Town of Fountain Hills (the "Zoning Ordinance"); and

WHEREAS, the Town Council desires to amend the Zoning Ordinance to revise Chapter 19 (Architectural Review Guidelines), Section 19.05 (Landscaping & Signage) to revise the procedures for developer donations to the Public Art Fund; and

WHEREAS, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding the subject matter of this ordinance were advertised in the August 22, 2012 and August 29, 2012 editions of the Fountain Hills Times; and

WHEREAS, public hearings were held by the Fountain Hills Planning and Zoning Commission on September 13, 2012, and by the Town Council on October 4, 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town of Fountain Hills Zoning Ordinance, Chapter 19 (Architectural Review Guidelines), Section 19.05 (Landscaping & Signage), Subsection I (Public Art Requirement) is hereby amended as follows:

I. Public Art Requirement:

1. All development proposals subject to ~~Design~~ CONCEPT PLAN REVIEW under this Chapter shall be required to provide one of the following prior to the issuance of a ~~Certificate of Occupancy~~ BUILDING PERMIT:
 - a. Exterior public art of an appraised or invoiced value equal to or greater than 1% of the cost of building construction and associated site work and signage. Water features using recycled water are preferred; or
 - b. A donation to the Fountain Hills Public Art Fund in an amount equal to or greater than 1% of the cost of building construction and associated site work and signage.

2. The value of construction costs will be determined by the Town using standard valuation procedures at the time of application.
3. Applicants are encouraged to meet with the Fountain Hills ~~Cultural Council~~ PUBLIC ART COMMITTEE for recommendations when considering exterior public art selections.
4. AN APPLICANT MAY BE ENTITLED TO A REFUND OF THE MONETARY DONATION OR THE RETURN OF THE EXTERIOR PIECE OF ART SUBJECT TO THE FOLLOWING:
 - a. AN APPLICANT WHO HAS MADE A MONETARY PUBLIC ART DONATION FOR A BUILDING CONSTRUCTION, FOR WHICH A BUILDING PERMIT HAS BEEN ISSUED BUT CONSTRUCTION HAS NOT BEEN INITIATED, SHALL BE ELIGIBLE FOR A REFUND. REQUESTS FOR A REFUND SHALL BE MADE ON A FORM PROVIDED BY THE TOWN FOR SUCH PURPOSES. AN APPLICATION FOR A REFUND MUST BE MADE WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. THE APPLICANT SHALL SUBMIT WITH THE APPLICATION (I) THE AMOUNT OF THE DONATION PAID BY THE APPLICANT, (II) RECEIPTS EVIDENCING SUCH PAYMENTS AND (III) DOCUMENTATION EVIDENCING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. FAILURE TO APPLY FOR A REFUND WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT SHALL CONSTITUTE A WAIVER OF THE RIGHT TO A REFUND. UPON RECEIPT OF A COMPLETE APPLICATION, THE TOWN MANAGER OR AUTHORIZED DESIGNEE SHALL REVIEW THE REQUEST AND DETERMINE WHETHER A REFUND IS DUE. A REFUND SHALL BE PAID UPON AFFIRMATIVE DETERMINATION BY THE TOWN MANAGER OR AUTHORIZED DESIGNEE.
 - B. AN APPLICANT WHO HAS MADE A PUBLIC ART DONATION IN THE FORM OF AN EXTERIOR PIECE OF ART, FOR A BUILDING CONSTRUCTION, FOR WHICH A BUILDING PERMIT HAS BEEN ISSUED BUT WHICH CONSTRUCTION HAS NOT BEEN INITIATED SHALL BE ENTITLED TO THE RETURN OF THE EXTERIOR PIECE OF ART DONATED. REQUESTS FOR RETURN SHALL BE MADE ON A FORM PROVIDED BY THE TOWN FOR SUCH PURPOSES. AN APPLICATION FOR A RETURN MUST BE MADE WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. THE APPLICANT SHALL SUBMIT WITH THE APPLICATION (I) THE DESCRIPTION OF THE EXTERIOR PIECE OF ART, (II) DOCUMENTATION EVIDENCING THE APPLICANT'S DONATION OF THE EXTERIOR PIECE OF ART TO THE TOWN AND

(III) DOCUMENTATION EVIDENCING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT. FAILURE TO REQUEST A RETURN OF THE EXTERIOR PIECE OR ART WITHIN 60 DAYS FOLLOWING THE EXPIRATION OR REVOCATION OF THE BUILDING PERMIT SHALL CONSTITUTE A WAIVER OF THE RIGHT TO RETURN AND THE EXTERIOR PIECE OF ART SHALL BE DEEMED PROPERTY OF THE TOWN. UPON RECEIPT OF A COMPLETE APPLICATION, THE TOWN MANAGER OR AUTHORIZED DESIGNEE SHALL DETERMINE WHETHER RETURN IS DUE. THE TOWN SHALL RETURN EXTERIOR PIECE OF ART TO THE APPLICANT FOLLOWING AN AFFIRMATIVE DETERMINATION BY THE TOWN MANAGER OR AUTHORIZED DESIGNEE.

- c. AN ADMINISTRATIVE FEE, IN AN AMOUNT DETERMINED BY THE TOWN COUNCIL SHALL BE PAID AT THE TIME OF THE APPLICATION TO OFFSET THE ADMINISTRATIVE EXPENSE ASSOCIATED WITH PROCESSING THE APPLICATION.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, October 4, 2012.

FOR THE TOWN OF FOUNTAIN HILLS: **ATTESTED TO:**

Linda M. Kavanagh, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Kenneth W. Buchanan, Town Manager

Andrew J. McGuire, Town Attorney

Senior Planner Bob Rodgers addressed the Council relative to these agenda items and said that the Building Safety Division is responsible for the initial collection of the public art pieces. He said that the requirement that Public Art contributions be made at the time of Occupancy approval for Commercial, Industrial or Multi-Family development projects has proven to be problematic for the Building Safety Division over the past few years. He noted that on occasion, Building Staff has had to hold back Certificates of Occupancy after a building has been constructed due to the applicant's not having met the public art requirement. He added that this requirement has occasionally slipped through the cracks and Certificates of Occupancy have been issued in error due to the current permit tracking software's inability to flag this requirement in the system. Mr. Rodgers informed the Council that the Building Safety Division has requested that the ordinance be amended to require that the donations (either cash or actual art pieces) be made at the time the Building Permit is issued. Mr. Rodgers added that if a cash donation is made or a piece of art is donated and a building permit is issued but no construction is initiated, mechanisms have been included to note that such contributions will be refundable should the project fail to develop.

Mr. Rodgers advised that the Planning & Zoning Commission voted at their September 13, 2012 meeting to recommend approval of this amendment and staff also recommends approval of the Public Art zoning ordinance text amendment as presented.

Mayor Kavanagh thanked Mr. Rodgers for his presentation.

There were no citizens wishing to speak on this agenda item.

Mayor Kavanagh declared the public hearing closed at 6:50 p.m.

AGENDA ITEM #8 – CONSIDERATION OF ORDINANCE 12-04, AN AMENDMENT TO THE ZONING ORDINANCE TO AMEND SECTION 19.05 - PUBLIC ART REQUIREMENTS. IF ADOPTED THE AMENDMENT WOULD REVISE THE OPTIONS FOR DEVELOPER DONATIONS TO THE "PUBLIC ART FUND" TO REQUIRE THAT SUCH DONATIONS BE MADE AT THE TIME OF THE BUILDING PERMIT ISSUANCE RATHER THAN AT THE TIME OF CERTIFICATE OF OCCUPANCY ISSUANCE. CASE NUMBER Z2012-02.

Councilmember Dickey **MOVED** to approve Ordinance 12-04, the Text Amendment to Section 19.05 - Public Art Requirements of the Zoning Ordinance as presented and Councilmember Elkie **SECONDED** the motion.

Councilmember Elkie requested that Mr. Rodgers provide some input on this issue and Mr. Rodgers advised that a Public Art contribution is any time they have a Commercial, Industrial or Multi-Family development proposal that goes through the Concept Plan approval process, which basically is site plan approval through the Planning & Zoning Commission. He said that there is a 1% donation requirement to the Public Art Fund and that 1% is based on the amount of the Building Permit. He noted that the Council has control over what those funds are used for (Public Art). He added that the Public Art Committee may make recommendations as was the case this evening.

Councilmember Elkie advised that there is an alternative to making that contribution and Mr. Rodgers concurred and stated that they could either make the 1% donation in cash or they could provide a public art piece for placement either on their own site or on public property in an amount at or above what the cash amount would have been.

Councilmember Elkie asked Mr. Rodgers to explain the process if a builder decided to have a piece located on their site rather than make a cash contribution (when would the piece have to be completed?) and Mr. Rodgers explained that currently the requirement is prior to the Certificate of Occupancy being issued (it would have to either be contracted for or in place). He said that staff would have to have adequate proof that the public art piece is going to be donated.

Councilmember Brown pointed out that Mr. Rodgers said that the amount was 1% of the price of the permit, when in fact it is 1% of the valuation of the building and Mr. Rodgers said he believes it is 1% of the price of the Building Permit and added that the permit cost is based on the value of the building.

Councilmember Brown commented that he thought that when they finally wrote the ordinance it was written up as being 1% of the valuation of the building and asked whether he is misreading that.

Mr. Rodgers replied that it is based on 1% of the value of the Building Permit and reiterated that the Building Permit is based on the value of the building (actually the value of construction).

Councilmember Elkie read the language contained in the ordinance.

Mayor Kavanagh asked if there was any point where the money was not refundable, and Mr. Rodgers responded that once the construction begins on the project the money is not refundable.

In response to a question from Vice Mayor Leger, Mr. Rodgers advised that the larger portions of the donations are in the form of cash donations (well over 80%).

Vice Mayor Leger asked what would happen if instead of donating cash a builder consigns with an artist for a particular piece of art but then the project doesn't go through -- is the builder then the owner of an art piece. He questioned whether any thought has been given to this scenario.

Chair Thompson addressed the Council and advised that for the smaller pieces that cost a few thousand dollars the builders simply pay the cash. She added that she can't envision a larger project getting to that point and not going through with it after going through all the trouble to consign a piece of art. She said that in the past this wasn't a problem because donations or art pieces came into play after the fact but in this case the Public Art Committee would work with the builder see what they wanted to do. She added that whether the Committee has the money at that time is something that they would have to discuss.

Councilmember Yates stated that he was serving on the Planning & Zoning Commission when this was crafted and to his recollection he does not think that someone would go out and physically buy the piece yet -- they would contract to buy a piece and they would not get the Certificate of Occupancy until they go down the checklist of inspections and it comes to the point where they are asked "Where is your art?" and they say "Well we are going to put it there" and then they would be told that until they get it they cannot get the Certificate of Occupancy but a permit would be issued just by showing the down payment. He added that the Vice Mayor is correct -- someone could go out and buy a piece of art and say "Here it is and I'm going to put it over there" but if the project doesn't come to fruition theoretically they then own a piece of art. He added that they discussed someone paying the money and the project not coming to fruition and noted that the goal is to get the Certificate of Occupancy and they can't get that until they meet that criteria.

Vice Mayor Leger stated that what concerns him is under the new proposed scenario staff is saying that they want to move this to the front end of the process and if a large developer contracts for an expensive piece of art at the time of the Building Permit and the plan or development goes south then that is a concern. He said he doesn't know how they would deal with that unless there was something in the contract with the Arts Group that clarified what would happen in that event.

Mr. Rodgers advised that in order to obtain a Building Permit the developer/builder would have to have some type of evidence to show that they have been working with the Public Art Committee and are either under contract or have a piece of art ready to install. He added that if they are under contract then they would have to believe that they were smart enough to put terms in their contract stating that they could back out if for some reason the project could not go forward. He said that otherwise they would own a piece of art but he does not see a way to get around that.

Councilmember Hansen asked if they could set up some type of escrow or holding account where those funds would stay until something was finalized -- either they get their building permit or if they intend to do it themselves they take the funds and put them in the holding account.

Mr. Rodgers commented that he really doesn't see the Town being involved in that -- they would have a contract with the artist or through the Public Art Committee. He added that the funds themselves would be on hold until the project is completed just in case the project doesn't go through.

Mayor Kavanagh stated that she knows from experience that once an artist has been commissioned to create a piece of art there is no going back on that. She asked if the intention was to actually have the piece started or wait until the project actually starts -- even though there is an agreement that they are going to purchase the piece and then they wait until the discussion actually starts and once that happens there is a contract and the funds available so they would move ahead with the piece.

Ms. Thompson advised that in the past they had until the Certificate of Occupancy was issued, so there was time. She added that under the proposed procedure because it is new they would have to look at that and the Board would have to look at what could be done in that case. She said she thinks the art pieces would not be started until they were sure that the developer was going to go through with the project. She added that when they want their own piece of art they could keep it on the "back burner" like it is today and subject to the Certificate of Occupancy.

Mayor Kavanagh expressed the opinion that these are details that have to be worked out before the Council can actually vote on this issue. She said that this should be brought back before the Public Art Committee to be discussed.

Chair Thompson commented that this is new for her -- she did not know that this was going to be on the agenda. She said that they are in favor of it but it is something that needs to be discussed.

Councilmember Dickey stated that it seems as though a contract for a piece of art would be like any other contract, for drywall, etc., and if the project fell through then that contract would go the wayside as well.

Mr. Rodgers pointed out that the Town would not be involved in that contract.

Councilmember Brown said that he wanted to walk through the process -- he is going to come to Town and get a permit to construct a building and the value is \$1 million so he has to pay the Town 1% of that value or \$10,000. He asked if the money he hands over for the permit goes into a Town account and Mr. Rodgers responded that it does. Councilmember Brown stated that even if he wants to supply his own piece of art why don't they just take that money (the 1%) to put in that account and let them pick out the piece of art, construct and start the project but don't release the money until the Certificate of Occupancy is issued. He said at that time they could buy the art or start the construction of the art and the Town would still be in control of that money so if they didn't start the project the Town would have the money to reimburse them. He stressed that this would only apply to the people who want to supply their own art.

Mr. Rodgers commented that that would be treating it like a bond and Councilmember Brown said it would make more sense to collect it up front.

Mayor Kavanagh noted that that would put the Town back into the picture as opposed to Councilmember Dickey's comment -- let it be a contract between the Public Art Committee and whoever is doing the construction.

Acting Town Attorney Chris Schmaltz said that he thinks the change in the ordinance before them this evening addresses both of those scenarios. He added that with the first one, a developer/builder doesn't want to have to deal with supplying a piece of art so he simply writes a check. He stated that if two weeks later after the permit was issued and the fee was paid the deal falls through (construction has not started) the money can be refunded. He said that if on the other hand the builder/developer chooses to work with the Public Art Committee to provide a particular piece of art, when the Building Permit fee is paid they provide a contract that contains a timeframe that spells out for the artist when he should begin work on it -- that contract is shown to the staff who then have proof that the builder/developer is under contract to supply a piece of art so they can accept that and that builds in some lead time as far as when the art work begins to be started, the developer knows that he is not going to be out of the money if the project doesn't go through and then if the project does in fact fall through the developer can talk to the artist and say "We're done." He added that there would not

be a negative impact because he contracted with the artist to hold off on starting until he got the go ahead to begin work on the art piece.

Mr. Schmaltz commented that those are the two scenarios and that is what he believes the ordinance addresses. He noted that the Town would not get involved in the contract between the developer and the artist. He added that they will not obtain their Certificate of Occupancy until they actually have a piece of art on the site and location can be determined.

Mayor Kavanagh said that she is hearing that the ordinance as presented covers both scenarios and Mr. Schmaltz concurred with that statement.

Councilmember Elkie stated that he believes they have failed to ask how many buildings there are in Town right now that do not have a Certificate of Occupancy in place because of their failure to contribute the 1% to the Public Art Fund and Mr. Rodgers replied that there is only one that he is aware of.

Councilmember Elkie asked how many times a Certificate of Occupancy has been issued by staff before collecting the 1% fee and Mr. Rogers responded he believes two or three since 2009.

Councilmember Elkie expressed the opinion that this could be better addressed through staff or software upgrades. He said that it does not appear that this is a significant problem and questioned why they are putting this additional responsibility on the builders.

Mr. Rodgers advised that it is his understanding that this has been brought forth because the Building Safety Division, which actually collects the funds, has to log these items in. He added with the current software they can make it a prerequisite between the Building Permit but for whatever reason the software will not let them make it a prerequisite between the Occupancy Permit so there is the possibility that if the project goes over a couple of years people forget that they didn't pay the Public Art Fee. He stated that they believe it would be easier for them administratively to have this at the front end.

Councilmember Elkie expressed the opinion that he believes some administrative steps could be put into place. He asked if all of the contracts for the purchase of art have to go through the Public Art Committee (to actually purchase the piece). Mr. Rodgers replied that they have to obtain approval from the Committee. Councilmember Elkie stated that if he were the builder he could actually contract with the artist on his own to build the piece as long as it has been approved by the Committee and it is the 1% of the total value of the building. Mr. Rodgers responded that that is his understanding.

Chair Thompson interjected that it would also have to meet the Public Art requirements.

Councilmember Yates said that regardless of whether someone contracts to buy their own art everyone pays the 1% and then that money is released on one side or the other -- either to the Public Art Fund upon issuance of the Certificate of Occupancy or back to the developer or artist and then the Town doesn't have to worry about anything. He added that they should collect it all up front and the responsibility is on the developer to prove that the art has been purchased.

Councilmember Dickey commented that they may be able to obtain art that is valued at more than the 1% -- family members and/or friends may want to contribute to the purchase as well. She said that this sounds like more of a hardship and she is a little uncomfortable with having that be a requirement.

Mr. Rodgers pointed out that these are commercial and industrial developments and there is no requirement that they stay at the 1% level.

Vice Mayor Leger stated that he respects what their attorney has said but when he reads the ordinance as written, and he knows the experience of commercial development in the Town, such a large commercial development could be jumping

at the bit and he just sees all this unnecessary stuff transpiring. He added that it is his understanding in reading the ordinance and talking with the staff that the purpose of this was to simplify things but he believes it has become more complicated. He said that at a minimum the notion of tabling this comes to mind to codify some of this in the ordinance

Vice Mayor Leger **MOVED** to table this item so that they can go back to the drawing board and take a closer look at this. He added that at a minimum if they are going to stick with their ordinance as written some of the language needs to be codified. Councilmember Hansen **SECONDED** the motion.

Mayor Kavanagh commented that in addition to trying to simplify the process for staff this was also a request from the Public Art Committee because they have seen people somehow slip by without paying the 1% fee. She said this might be a low number because they have not had a lot of construction but that could increase.

Town Manager Ken Buchanan requested clarification from the Council relative to staff direction on this item.

Mayor Kavanagh stated that this issue should go back before the Public Art Committee because there are some things that the Committee has not considered because they did not realize that this item was even on the agenda. She added that Mr. Miles is probably more aware of anyone about how this works.

Councilmember Yates asked how from a Parliamentary procedure they could make this so it is understood that they are basically asking for the ambiguity to be clarified -- are they tabling it or giving direction?

Mr. Schmaltz responded that as far as the procedure, they have a current motion on the floor to table this item and if the intent there is to table the item that is in front of them that is direction to bring back a new ordinance after input has been provided. He added that the action would be to table the specific amendments that are in front of the Council tonight and then staff will take all of this input, work with the various interested parties and if necessary revise the ordinance and bring it back through the process which includes bringing it back before the Council for consideration and action.

The motion **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #9 - PUBLIC HEARING RELATING TO ORDINANCE 12-06, AN AMENDMENT TO THE ZONING ORDINANCE TO AMEND CHAPTERS 2, 5, 9, 10, 11, 15 AND 18. IF ADOPTED THE AMENDMENTS WOULD REVISE THE SECTIONS RELATING TO "TEMPORARY USE PERMITS" TO AMEND, ELIMINATE, AND/OR REDEFINE THESE SECTIONS IN ORDER TO STREAMLINE PROCESSES AND ELIMINATE UNNECESSARY BUREAUCRACY OR DUPLICATIVE PERMITS. CASE NUMBER Z2012-02.

Mayor Kavanagh declared the public hearing open at 7:23 p.m. and said that she would be taking comments on Agenda Item #9 and #10.

Senior Planner Bob Rodgers addressed the Council relative to this agenda item and stated that numerous Temporary Use Permit (TUP) regulations currently reside in seven chapters of the Zoning Ordinance and occasionally duplicate a number of other permit requirements. He added that they also sometimes create unnecessary and time-consuming procedures. He advised that seven of those chapters are being recommended for amendment under this proposal. Mr. Rodgers briefly highlighted the seven chapters. He informed the Council that the Planning & Zoning Commission initiated this amendment at their May 24, 2012 Regular meeting and voted at their September 12, 2012 meeting to forward a recommendation to Town Council to approve this ordinance amendment. He further stated that staff also recommends approval.

There were no citizens wishing to speak on this agenda item.

Mayor Kavanagh declared the public hearing closed at 7:28 p.m.

Vice Mayor Dickey commented that the work was more than just cosmetic and Mr. Thumith confirmed her statement and added that the project constitutes a major maintenance item.

Mayor Nichols thanked Mr. Thumith for his presentation and input.

The Mayor called for a vote on the motion.

The motion **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #6 – CONSIDERATION OF RESOLUTION 2007-63, APPROVING THE PUBLIC ART FUND GUIDELINES.

Planning and Zoning Director Richard Turner addressed the Council relative to this agenda item and advised that on December 7, 2006, the Council amended the Zoning Ordinance to provide for Architectural Review Guidelines (Chapter 19 of the Zoning Ordinance). Section 19.05 (l) of these regulations direct that all development proposals subject to Design Review were required to provide public artwork or a donation to the Fountain Hills Public Art Fund prior to the issuance of a Certificate of Occupancy. The goal of the public art requirement of the Zoning Ordinance was to beautify the community with a wide variety of high-quality art projects. The presence of the artwork in developments creates a competitive edge by attracting people who were curious about the artwork. Residents and visitors might pause to enjoy the artwork's surprising and aesthetic delights and often return to experience it again while shopping or conducting business.

Mr. Turner stated that staff felt it important to develop the proposed guidelines to help customers understand the purpose of the regulations, what types of art were acceptable, what costs were eligible for inclusion and how to work with the Public Art Committee. He added that with the assistance of the Town Attorney, staff had developed such guidelines that established the standards and criteria for public art that was integrated with a project and ensured that the art could be enjoyed by the public. He noted that staff recommended approval and indicated his willingness to respond to questions from the Council.

Vice Mayor Dickey **MOVED** to approve the Public Art Guidelines as outlined by staff and Councilmember McMahan **SECONDED** the motion.

Councilmember Schlum asked whether staff had any idea of the type of budget they would be working with or a ratio relative to the people who would actually make the contributions and do the improvements themselves on their own property. Mr. Turner replied that staff's limited amount of experience in this particular areas had not allowed them to establish what the ratio was going to be but stated the opinion that they would probably get more contributions than actual pieces of art. He added that the actual budget would depend on the commercial activity that takes place in the Town because the Public Art Fund requirement was part of the Architectural Review Guidelines, which came into play any time an applicant went through the Concept Plan process (a commercial development process).

Vice Mayor Dickey asked why a mechanical reproduction of a piece of art work would not be eligible and Mr. Turner responded that after reviewing other jurisdiction's regulations and guidelines, staff decided that the goal was to provide pieces of original high-quality art.

In response to a comment from Councilmember Leger, Mr. Turner confirmed that the Arts Council had been involved in the process and provided input.

Vice Mayor Dickey asked if the Council approved the guidelines as presented and an artist did a wonderful reproduction of a famous painting, whether that painting would be allowed. She said that even reproductions could constitute quality art. Mr. Turner responded that the proposed guidelines were general guidelines and if the Arts Council found that a piece of work met their criteria, the Town would take it.

Discussion ensued relative to the fact that if an issue arose as to whether or not to determine whether a piece of art was acceptable, the Arts Council would be called upon to provide input; the fact that staff would solicit credentials to ensure that the work was indeed a quality piece of art; the fact that there was some room for latitude in the guidelines; Councilmember Kehe's comments relative to the fact that the proposed guidelines use language such as "encourage" and "shall" and concerns regarding whether the guidelines represented rules that applicants must abide by. Mr. Turner responded that the only "fast rules" were those included in the Zoning Ordinance and the requirement in that Ordinance was for a certain percentage of a project's cost to be either contributed in terms of funds to the Public Art Committee or used to acquire public art. It was up to the applicant to consult with the Committee and staff encouraged them to do that so they could obtain helpful advice that would benefit the Town overall. It was not required that they consult with that group. He confirmed that it was not required for the Public Art Committee to render a ruling as to whether the art was appropriate.

Town Clerk Bev Bender advised that a citizen had submitted a request to speak on this item.

Jerry Kirkendoll, a resident of Fountain Hills, stated the opinion that there were going to be a lot of problems in the future on this issue. He said that his life had been all about art but telling someone when they put a building up that they had to pay 1% was simply a very creative way of taxing those people. He stated that he believed the proposal was unfair and a few hundred other people in the Town have expressed the same sentiment. He added that people had enough challenge just getting the buildings up and paying for those costs without adding some more costs on. He further stated that oftentimes peoples' idea of art could vastly differ and if they had to wait for yet another approval to come forward, this could create hardships and negatively impact business that want to establish themselves in the Town. He expressed the opinion that the Town did not have the right to tell someone that they must do this. He added that the Town had statues and if people wanted to donate art that would be great and if private groups wanted to buy them and donate them that too would be great but to require businesses to do what they were proposing was inappropriate.

Mayor Nichols thanked Mr. Kirkendoll for his comments.

There being no additional comments or questions, the Mayor called for a vote on the motion.

The motion **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #7 – PRESENTATION(S) AND DISCUSSION WITH POSSIBLE DIRECTION TO STAFF REGARDING TRAFFIC CONTROL AT AVENUE OF THE FOUNTAINS AND SAGUARO BOULEVARD.

Public Works Director Tom Ward addressed the Council relative to this agenda item and stated that prior to the meeting this evening he spoke with the Mayor about making some comments relative to pedestrian crosswalks. He found a website, cityofmesa.org that contained an interesting article about pedestrian crosswalks written by ADOT (the Arizona Department of Transportation). Mr. Ward said the article talked about the safety of pedestrian walkways and a San Diego study showed traffic engineers that nearly six pedestrian were crossing in marked crosswalks for every one mishap in unmarked crosswalks. People felt that they were safe in marked crosswalks but how safe were they? Marked crosswalks were widely classified as safety devices and most jurisdictions give the pedestrian the right-of-way when within them. Interestingly, however, there was strong evidence that these very facts prompted pedestrians to feel overly secure when using a marked crosswalk to the degree that they aggressively placed themselves in a hazardous position based on the mistaken belief that the motorists could and would stop in all cases, even when it might be impossible to do so. It was also not unusual for this type of aggressive pedestrian behavior to cause rear-end collisions. He said that this did not mean that marked crosswalks should not be installed because they were useful traffic engineering device for channeling pedestrians and helping them find their way across complex and confusing intersections and would continue to be used until a better means was developed to show the preferred route to pedestrians when crossing the street. He stated that in conclusion, it was appropriate to state that marked crosswalks would continue to be a useful traffic control device but added that it was important that the general public recognize when marked crosswalks

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM



Meeting Date: 3/19/2019

Meeting Type: Regular

Agenda Type: Regular

Submitting Department: Administration

Staff Contact Information: Elizabeth A. Burke, Town Clerk, 480-816-5115; eburke@fh.az.gov

REQUEST TO COUNCIL (Agenda Language): DISCUSSION with possible direction relating to any item included in the League of Arizona Cities and Towns' weekly Legislative Bulletin(s) or relating to any action proposed or pending before the State Legislature.

Applicant: NA

Applicant Contact Information: NA

Owner: N/A

Owner Contact Information: NA

Property Location: NA

Related Ordinance, Policy or Guiding Principle: A.R.S. §38-431.01

Staff Summary (background): This agenda item will appear on the Regular Meeting agendas through the end of this year's Legislative session. It is intended to provide an opportunity for Council to discuss any proposed or pending legislation before the State Legislature, and possibly take action in response thereto.

Risk Analysis (options or alternatives with implications): NA

Fiscal Impact (initial and ongoing costs; budget status): NA

Budget Reference (page number): NA

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s): NA

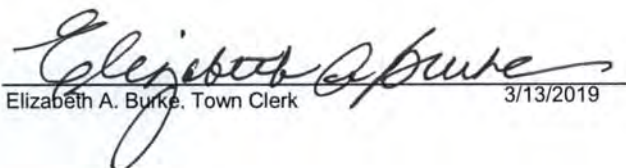
Staff Recommendation(s): Approve

List Attachment(s):

SUGGESTED MOTION (for Council use): Council may give direction to the Town Manager to express a position to the Legislature or other body with respect to any item on the League update.

Prepared by:

Approved:


Elizabeth A. Burke, Town Clerk 3/13/2019


Grady E. Miller, Town Manager 3/13/2019