NOTICE OF REGULAR MEETING

FOUNTAIN HILLS TOWN COUNCIL

Mayor Ginny Dickey	
Vice Mayor Art Tolis	**Councilmember Alan Magazine**
Councilmember Dennis Brown	**Councilmember Mike Scharnow**
Councilmember Sherry Leckrone	**Councilmember David Spelich**

TIME: **5:30 P.M. – REGULAR MEETING**

WHEN: **TUESDAY, APRIL 2, 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 David Felton, Fountains United Methodist Church

3. **ROLL CALL** – Mayor Ginny Dickey

4. **REPORTS BY MAYOR, COUNCILMEMBERS AND TOWN MANAGER**

5. **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.

6. **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 19, 2019; and the Regular Meeting of March 19, 2019.

B. CONSIDERATION OF Resolution 2019-21 authorizing renewal of the Town's membership in Arizona Metropolitan Trust for Employee Health Care.

C. CONSIDERATION OF Resolution 2019-13, abandonment of the 10' Public Utility and Drainage Easement at the rear, and abandonment of a portion of the 20' Public Utility Easement and Drainage Easement at the northerly side of Plat 428, Block 2, Lot 59 (15013 N. Tanglewood Court), as recorded in Book 155, Page 19, records of Maricopa County, Arizona. (EA 2019-04)

D. CONSIDERATION OF Resolution 2019-16, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 601-A, Block 1, Lot 16 (15842 E. Sunflower Drive), as recorded in Book 161, Page 44, records of Maricopa County, Arizona, with stipulation. (EA 2019-05)

E. CONSIDERATION OF Resolution 2019-19, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 603-A (Amended), Block 6, Lot 7 (15704 E. Sycamore Drive), as recorded in Book 196, Page 28, records of Maricopa County, Arizona; with stipulation. (EA 2019-07)

F. CONSIDERATION OF Resolution 2019-20, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 431, Block 5, Lot 16 (17336 E. El Pueblo Blvd.), as recorded in Book 151, Page 43, records of Maricopa County, Arizona. (EA 2019-09)

7. **REGULAR AGENDA**

A. CONSIDERATION OF approval of Contract C2019-068 with ZOLL Medical in the amount of $94,499.06 for three replacement defibrillators, associated equipment and preventive maintenance.

B. CONSIDERATION OF the removal of a stipulation relating to the abandonment of a utility and drainage easement previously approved by the Town Council on February 19, 2019.

C. CONSIDERATION OF approving the purchase of a 2019 Caterpillar 420F2 Backhoe in the amount of $130,595.17 to replace the current Backhoe that is twenty years old, utilizing the vehicle replacement fund.

D. DISCUSSION WITH POSSIBLE DIRECTION to staff regarding a Christmas Tree for First Responders

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.

8. 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:

9. ADJOURNMENT.

AGENDA POSTED:

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: 4/2/2019

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 19, 2019, and the Regular Meeting of March 19, 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 19, 2019, and the Regular Meeting of March 19, 2019.

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

Prepared by:

Elizabeth A. Burke
Elizabeth A. Burke, Town Clerk 3/21/2019

Approved:

Grady E. Miller, Town Manager 3/21/2019

TOWN OF FOUNTAIN HILLS
MINUTES OF THE SPECIAL MEETING OF THE
FOUNTAIN HILLS TOWN COUNCIL
MARCH 19, 2019

1. CALL TO ORDER – Mayor Ginny Dickey

Mayor Dickey called the Special Meeting of March 19, 2019, to order at 4:02 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 and David Spelich.

COUNCILMEMBERS ABSENT: None.

STAFF PRESENT: Town Manager Grady Miller, Town Attorney Aaron D. Arnson, Senior Planner Marissa Moore (Item 4.A.i), Community Services Director Rachael Goodwin (Item 4.A.ii), and Town Clerk Elizabeth A. Burke.

3. VOTE TO GO INTO EXECUTIVE SESSION

Councilmember Brown **MOVED** to recess into Executive Session; **SECONDED** by Councilmember Scharnow; passed unanimously. The Fountain Hills Town Council recessed into Executive Session at 4:02 p.m.

4. EXECUTIVE SESSION:

A. 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. Hemingway Zoning Reversion and Associated Project

ii. Public Art ordinance

5. ADJOURNMENT

The Fountain Hills Town Council reconvened into Open Session at 5:11 p.m., at which time the Special Meeting of March 19, 2019, adjourned.

TOWN OF FOUNTAIN HILLS

Ginny Dickey, Mayor

ATTEST AND PREPARED BY:

Elizabeth A. Burke, Town Clerk

TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR MEETING OF THE
FOUNTAIN HILLS TOWN COUNCIL
MARCH 19, 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 Clayton Wilfer, Joy Fellowship

Pastor Wilfer 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. **REPORTS BY MAYOR, COUNCILMEMBERS AND TOWN MANAGER**

Mayor Dickey reported that she and Mr. Miller were pulling Item 8-E as they have requested that additional information be supplied. She said that they may be discussing it further during the budget process.

She also reported that a public hearing had been posted on property regarding the Hemingway zoning reversion for this evening's meeting, but that will not come back before Council until June 4, 2019.

Mayor Dickey said that St. Patrick's Day always reminded her of their former colleague and Fountain Hills pioneer, Keith McMahan, who passed away on March 17, 2009. She then read the following quote from a friend, *"Councilmember McMahan had a passion for Fountain Hills and a love of helping the Town. He served the community well. I'll always remember his kind spirit and great smile."* She said that it has been ten years and they miss him.

She reported that she had recently attended an East Valley Mayors' Meeting in Paradise Valley as well as the Kite Festival. She said that she read a proclamation and presented it to Mayor Oscar Gomez from Altaco, El Salvador, one of their Sister Cities, at a recent reception held in his honor at Town Hall, along with Vice Mayor Tolis and Councilmember Scharnow.

She attended a dedication to honor Jane Haynes, as the *Times* called her, "Queen of the Botanical Garden." She also met with Flagstaff Mayor Coral Evans regarding short-term rentals as well as a Sister Cities fundraiser with Mayors Kavanagh and Morgan.

Councilmember Spelich reported that he and Mayor Dickey spoke at a recent Kiwanis Dinner and they enjoyed it. They discussed a lot of substantive issues ranging from the Sheriff's Office, town infrastructure, streets, revenue, etc. It was a good meeting with a lot of questions and answers.

He said that he also wanted to personally thank Rachael Goodwin and her staff who put on a great St. Patrick's Day event which showcased the Town.

Councilmember Scharnow reported that he would be attending an upcoming transportation conference and this Thursday he would be attending a Rural Metro meeting. He said that it was good to remember Keith; he worked with him closely at the paper. One thing he remembered was his laugh; he had a great laugh and smile.

He said that it was good to see Mayor Oscar. He has been to Altaco twice and the reception was good and they had a nice dinner at Ft. McDowell Resort later that evening. He said that the Sister Cities Commission and Committee were represented and they also presented some checks to help students in Altaco.

5. SPECIAL PUBLIC APPEARANCES/PRESENTATIONS

A. Monthly Update by Captain Larry Kratzer of the Maricopa County Sheriff's Office

Captain Kratzer said that one thing they have been focusing on is increasing visibility and traffic enforcement since there have been a high number of accidents, especially involving pedestrians. They have been running the radar equipment on Saguaro and other high-volume areas and have had increases in traffic stops. He said that if residents had any locations where they would like to see increased enforcement they could contact his office. He said that in March alone they have issued over 100 warnings or citations including some for stop sign and signal violations.

He said that recently with school back in session there have been complaints with high school drivers on Bainbridge so they have conducted additional enforcement there as well.

Captain Kratzer said that they held their Coffee with a Cop on March 9, partnering with the Maricopa County Attorney's Office. They talked with residents and deputies, and provided a child identification finger printing booth. He said that it was held for two hours and they had a lot of people come and go.

He said that one thing they have been talking about is working with the Fountain Hills Times and being sure they are addressing concerns being voiced. He started meeting with Bob Burns on a weekly basis every Thursday to talk about things in the Town that residents may be interested in. He said that they will be working on public service announcements as well. One of the misconceptions in the community about lack of enforcement is that the paper no longer publishes traffic stops and they will be looking at ways to put some of that information back in the paper.

Councilmember Spelich said that he has publicly criticized them in the past, but he would also acknowledge that two mornings this week he has reached out to Mr. Miller to report that at 5:15 a.m. he has seen radar going with two squad cars on Saguaro and one on Shea. They are highly visible and he has noticed that just in the last few days leaving in the morning, people are doing the speed limit.

Councilmember Magazine asked how much a traffic ticket is and how an officer decides on whether to give a warning or a ticket. Captain Kratzer said that the ticket is based on the charge so he could not say off the top of his head, but probably around $200 depending on the speed and whether they went to traffic school.

Captain Kratzer said that the deputies have the discretion on whether to give a warning or ticket. Some of the things they may consider are how egregious the speed is, the environment, pedestrian traffic, or whether there have been a lot of accidents at the location. He said that he currently has three to four officers on the roads at one time, but calls for service take precedence. He said that they are trying to get an undercover vehicle through a grant from the Arizona Governor's Office of Highway Safety.

Councilmember Magazine suggested that they suspend warnings for a period of three months and go straight to issuing tickets.

6. CALL TO THE PUBLIC

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Doug Harris, District Governor of the Lions Club in the State of Arizona, reported that they desire to reestablish a Lions Club in Fountain Hills. He said that in 1989 they had a club charter with about 45 people, but most of them have died. He said that they would like to have a stamp of approval for reestablishing the club. Mayor Dickey explained that the Council could not respond, but they appreciated them being at the meeting.

Bob Shelstrom, Fountain Hills, reported on a Public Records Request he had performed regarding the restrooms project at the lake and did not find any report regarding problems with the boxes. He believes that the Council needs to look very carefully at that project.

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 Saguaro 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.

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

8. REGULAR AGENDA

A. CONSIDERATION OF adopting Resolution 2019-22 amending the McDowell Mountain Preservation Commission Bylaws.

Mr. Miller said that the Council discussed Items 8-A and 8-B two meetings ago and this resolution amends the Bylaws of the McDowell Mountain Preservation Commission to provide for an eighth member as well as two emeritus positions.

Councilmember Scharnow **MOVED** to adopt Resolution 2019-22; **SECONDED** by Councilmember Brown; passed unanimously.

B. CONSIDERATION OF appointment of additional member to the McDowell Mountain Preservation Commission and possible designation of up to two emeritus members.

Mayor Dickey **MOVED** to appoint Dr. Darrienne Slater to the McDowell Mountain Preservation Commission and designate Bill Myers and Bill Craig as Emeritus members; **SECONDED** by Councilmember Leckrone; passed unanimously.

C. CONSIDERATION OF approving the Strategic Planning Advisory Commission recommended Reprioritization of the 2017 Strategic Plan.

Mr. Miller explained that during the recent Council Retreat they spent a considerable amount of time going over the objectives and tasks in the Strategic Plan and the reprioritization recommended by the Strategic Plan Advisory Commission. He said that five members of that commission are at the meeting tonight and they are asking that the Council approve the reprioritization as presented.

Mr. Miller said that there is going to be a visioning process taking place this summer that will be the impetus for the next total rewrite. The SPAC is scheduled to do a complete major update in 2020.

Bob Shelstrom, Fountain Hills, voiced concern with the questions he had raised about justification for statements made in the Strategic Plan for which he received no answers. He commented on the need to address the schools and reported recent accounts of many students leaving the community to attend school elsewhere. He said that the Council needs to be asking questions or they just become a rubber stamp.

Councilmembers thanked the members of the Strategic Plan Advisory Commission. Mayor Dickey noted that she has been taking the summary sheet to speaking engagements to show that they still have these goals, although some have been reprioritized.

Discussion was held on the task related to density of housing, and that it referred to multifamily and affordable housing. John Kraft of the SPAC indicated that this centered around the Town's demographic mix. He said that with the vision that the Town has with schools being an intricate part of that they need a mix, and that begins with housing. They are looking for the Plan to recommend that the town consider appropriate development of homes for families, which means higher density.

Councilmember Spelich said that he has a problem with criticizing the schools and using that criticism to say that 300 children in Fountain Hills don't attend school here to imply that the reason is the poor quality of education. There may be other reasons why students attend elsewhere, such as Catholic families wanting their children to attend a Catholic-based school.

Councilmember Magazine said that he has no idea why students are going elsewhere, but his understanding is that they are receiving as many new students as they are losing each year.

Vice Mayor Tolis said that he had the opportunity to spend the whole day with one of the leaders of the school district and discussed the challenges being faced. He said that he can vouch for all of his children have or continue to attend school in Fountain Hills and it is an excellent district; however, they do need to be concerned about the future of the community and the aging demographics.

He said that the whole issue about the school district came up in the initial planning three years ago that they needed to have the Town more involved with the district. He said that they have had several joint meetings and he thinks it is already being reflected in their relationship.

Councilmember Scharnow said that it also needs to be pointed out that the plan was not created in a vacuum. A lot of the Plan was developed after the visioning process through Town Halls. He said that these are goals, objectives and tasks.

They do not need reams of data and statistics behind the goals. They are things they want to achieve and what the community told them they wanted to achieve.

Vice Mayor Tolis said that it is nice to have the Strategic Plan, but with regard to the state trust land, if they do not focus on the downtown and commercial growth to provide what families desire, no developer is going to come in here; they have a real challenge. He recommended that they focus on what they have, determine what they have and be the best of it.

Mayor Dickey said that the idea of schools was to draw younger families to the Town. She said that she did remembered hearing that while some students go elsewhere for schooling, the percentage of students doing that is comparable to the rest of the country. She said that she was very supportive that defining their Strategic Plan to include local schools and having the Town address and serve all of the ages is the task that went forward to the Town.

Mayor Dickey **MOVED** to approve the reprioritization of the Strategic Plan as presented; **SECONDED** by Councilmember Brown; passed unanimously.

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.

Mr. Miller said that staff has a presentation on this item, but he wanted to give a little background. He said that they are a small organization and do not have a purchasing function in town. Each of the department directors oversees purchasing within their areas and every year they have challenges getting contracts in place for a variety of maintenance services.

A few years ago they started working with the attorney to begin using a procedure that is used by many other communities called Job Order Contracting (JOC).

Community Services Director Rachael Goodwin said that this is not limited to just community services, but throughout the organization. She then continued with a PowerPoint presentation which addressed:

WHAT IS A JOC?
It is a list of pre-vetted vendors that are "on call" for the town as needed

- Preapproved – legal review and contacts in place
- Paperwork is completed on the front end to save time when projects arise.
- "Umbrella" Concept – by having a variety of vendors, we ensure availability and wide range of services

Councilmember Magazine left the meeting at this time (6:17 p.m.)

JOC'S ARE NOT FUNDED BY 'NEW" MONEY OR ADDITIONAL MONEY
- Same money we would spend when issues or maintenance concerns arise
- Funding is already in the budget, such as our standard maintenance items

WHERE DOES THE MONEY COME FROM?
Each vendor in the JOC is authorized for up to $125,000. That's a lot!
- This limit does not imply there will be expenditures of that amount.
- This JOC is meant to service all departments within the Town.
- This also does not imply we will spend this maximum with each vendor.
- If there is no funding, then it cannot be completed.

We can't anticipate what job will come up. Examples include:
- Plumbing Issues
- Playground Damage
- Avenue Fountain Pumps
- HVAC
- Storm Damage
- Concrete Damage
- Electrical Work

HOW DOES THE JOB WORK?
When we have a need arise:
- Contact a vendor from the approved list
- Request a quote/estimate
- Review bid for cost, timeline and availability
- Seek potential follow up from additional vendors if needed
- Seek approvals as needed, based on expenditure level
- Issue PO and proceed with work

WHAT ARE THE RISKS?
- This process does not change our check and balance mechanisms within our procurement policies.
- Thresholds still in place and requires Council approval if over $50,000
- This is not intended to replace the procedures for large projects or new initiatives
- Budget tracking requirements are still in place.

BENEFITS
Staff Efficiency:
- When problem arises, we can address in days, not weeks
- Does not need to wait on Town Attorney or Finance review
- All the paperwork has already been done and the vendors have been approved

Cost Savings:
- Saves staff time producing individual contracts
- Reduces workloads on Finance department to track each contract independently
- Reduces workload and billable hours from legal

Community Value:
- Address community issues quickly
- Show responsiveness

- Build Trust and Reliability

WHO SUPPORTS IT?
- Finance
- Town Attorney
- Town Manager
- Public Works Department
- Community Services Department

DOES ANYONE ELSE DO THIS?
Yes – it is very common:
- State / ADOT
- City of Mesa
- City of Phoenix
- City of Scottsdale
- City of Avondale
  12 jobs this year / 60 jobs in 5 years

HOW DID WE GET THESE VENDORS
1. Issued RFP
2. Scored
3. Accepted all with minimum qualifications
4. Includes large scale and local vendors

EXAMPLE SCENARIOS:
- Sidewalk repair in the park
- Irrigation leak
- Post monsoon clean up
- Damaged or leaking window in the Community Center
- All need to be addressed but are not considered emergencies

Councilmember Leckrone said that Ms. Goodwin provided a great presentation and it answered all of her questions. She said that she likes improvements that provide efficiency and effectiveness.

Councilmember Brown asked what department directors' authority is with contracts. Ms. Goodwin said that if a bid came back at $3,500, it would be within her purview. She said that she could not remember that actual limit authority that department directors have available.

Vice Mayor Tolis agreed that it was a great presentation. He said that he is always advocating for local businesses being preferred for jobs in town. He asked which vendors were from Fountain Hills. Staff replied that it was TNT Contracting and Carume Contracting. Vice Mayor Tolis asked if staff knew why more local vendors do not submit.

Mr. Miller said that for a lot of local businesses, it can be a lot of work to complete the paperwork. Smaller businesses do not always respond to these. Ms. Goodwin noted that Mr. Arnson did help them simplify the contracts to make it easier for smaller businesses to respond. Mr. Miller said that sometimes it is the insurance requirements as well, but staff is trying to protect the Town and the taxpayers' interest.

Mayor Dickey asked how they came up with the $125,000 number. Mr. Rudolphy said that there is a state statute that limits JOC contracts at anything under $250,000. He had spoken with the prior attorney and they did not believe it is realistic to bring a contract before Council at that amount, so they split it in half.

Councilmember Spelich said that he received an e-mail from a constituent that said that they were basically authorizing staff to spend up to $125,000. Ms. Goodwin said that she could understand that concern, but they are not authorizing expenditures. This is to allow us the opportunity to work with these vendors up to that number. They can only spend what they have budgeted. Councilmember Spelich said that Ms. Goodwin did an excellent job.

Bob Shelstrom, Fountain Hills, said that these are only as good as the evaluation off the bid. He believed that a large percentage of the contract was subjective. With those reservations, overall he felt is was a good concept.

Ms. Goodwin said that they do not have the scoring sheets. They had 17 submissions and they accepted 15; one was late and one was incomplete.

Councilmember Scharnow said that there are six broad categories and each category has a minimum of two contractors; he thought that was good. He had full faith and confidence in staff with their recommendation; he saw no need to see the score sheets.

Councilmember Scharnow **MOVED** to approve the contracts as presented (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); **SECONDED** by Councilmember Leckrone; passed unanimously.

D. 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.

THIS ITEM WAS REMOVED FROM THE AGENDA AT THE BEGINNING OF THE MEETING.

E. DISCUSSION WITH POSSIBLE DIRECTION amending or repealing the Public Art ordinance.

Mr. Miller said that this item was placed on the agenda as some of the members wanted to have a review of the public art program and ordinance as it was related to the fees. At this point, they will bring this back at a later time with additional information that has been requested, but he believed that Dori Wittrig with the Public Art Committee wished to address Council.

Ms. Wittrig said that she wanted to let the Council know that they have been having discussions with staff on the future direction of the Public Arts Committee. She said that it was no secret that their community is fortunate to have had such a passionate group that believed in providing a public art collection with over 150 pieces located in prominent locations throughout town.

She said that she is a realtor and every time shje has a new prospect she takes them in front of Centennial Center and tells them about the quality of the residents, the volunteerism, and the attitude of people. She said that it has a profound impact on them.

Ms. Wittrig said that they have had a dedicated group for 25 years, but they are tired and deserve a break. In 2018 they had a new era of leadership begin with herself and Carol Carroll, who wanted to understand what the role of the committee should be. They deemed they wanted to 1) create more oversight by Town staff and the Town Council; and 2) create more diverse public art committee; and 3) create systems and procedures for public involvement.

She said that the process in the past had been handled by a group of talented people, but much of it was not documented and the felt they needed a documented system. She is with the committee on a short-term basis to help organize and get it going in a different direction and then pull in some people that are more passionate about public art.

She said that the committee hired a public art consultant who is creating suitable forms, bringing best practices from other groups. Her initial work was completed in 2019 and they met with Rachael Goodwin.

They found during that time that the process reads more like ordinance and was not written with practice in mind and not best practices. They found that:

1) A maintenance contribution is common practice for municipalities where donators contribute a percentage of the value of the donated art for the future maintenance.
2) They wanted to improve processes for developers' contributions, as in Fountain Hills there has been some confusion about the execution and they need clearer and precise guidelines.

She said that they hoped that the Town Council would allow them to guide the public art process and they were looking forward to working with the Town so that the collection will be preserved and relevant for future generations.

Councilmember Spelich thanked her for her presentation and said that they recently met at the Kiwanis and mentioned that currently the Town incurs a cost of $22,000 a year for insurance and maintenance of the public art. He was very glad that they have taken it upon themselves to consider the maintenance.

Councilmember Brown thanked Ms. Wittrig and said that they all have a lot of work to do. They might even hold a work session on this in the future. He said that he could not think of anyone better to take this over.

Mayor Dickey said that they appreciated all of the work they are putting into this, especially as a charter member of the Public Art Committee.

Councilmember Brown said that he did not feel they have enough information for the Council or committee to make a motion tonight. He would like to direct staff to put together a work session so they can discuss this openly, preferably before the Council break.

F. 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.

Mr. Arnson said that he had nothing new to report. During the call last week they referenced several bills, but most directly applicable to Fountain Hills is HB2672, short-term rentals. Mayor Dickey said that it is scheduled to be in the Senate Commerce Committee, chaired by Michelle Ugenti-Rita. She said that the Town has already expressed support, but if individual Councilmembers would like to e-mail her they could express their appreciation for her support.

Mayor Dickey said that Ugenti-Rita was also working on Appropriations, and there was a bill that was going to sweep HURF again, taking money off the top. She said that it has changed to a new bill and could actually mean $150,000 to $200,000 coming to Fountain Hills.

Mayor Dickey said that she met earlier today with Captain Kratzer and were discussing S1165, hands-free phones, and it is moving forward. If members supported that they may want to voice their support as well.

Mr. Miller noted that those cities/towns that have enacted their own hands-free ordinances would have a 12-month period before they would go away.

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:

None.

10. ADJOURNMENT.

Councilmember Brown **MOVED** to adjourn; **SECONDED** by Councilmember Leckrone; passed unanimously.

The Regular Meeting of the Fountain Hills Town Council held March 19, 2019, adjourned at 7:02 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 19th day of March, 2019. I further certify that the meeting was duly called and that a quorum was present.

DATED this 2nd day of April, 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.

ITEM 6-B

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Administration

Staff Contact Information: David Trimble

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF Resolution 2019-21 Authorizing renewal of the Town of Fountain Hills' membership in the Arizona Metropolitan Trust.

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: Attract and retain quality staff.

Staff Summary (background): In 2016 the Town joined the Arizona Metropolitan Trust (AzMT) for employee health benefits. The Trust works under three year contracts, so it is time to renew the Town's membership for another three years. There is no membership fee to join AzMT and the Town enjoys the benefit of reduced medical, dental, and vision insurance premiums for employees. The Town has spent, on average, approximately $320,000 yearly for these benefits over the past two years. Since joining AzMT the Town has saved approximately $100,000 per year for these benefits. The premiums are budgeted for each Town division as part of employee related expenses. This requested renewal would maintain the same arrangement for employee benefits for the next three years; at which time the Town would likely choose to renew again if past experience continues positively. Before joining AzMT the Town had been under the broker/provider model. Arizona Public Employers Health Pool (APEHP) provided medical benefits, United Concordia provided dental, and Sightcare provided vision coverage, and the Town paid a broker to coordinate and select vendors. By joining AzMT the Town eliminated the broker, saved money each year, and enhanced employee benefits. Open enrollment had previously been staggered with each benefit requiring open enrollment at different times throughout the year. Under AzMT open enrollment has been consolidated to once per year. COBRA (Consolidated Omnibus Budget Reconciliation Act, requiring optional continued coverage after employees cease service to the Town) administration was previously done in-house requiring administrative time; whereas COBRA administration is provided by AzMT currently. For these reasons, we recommend approval of the Town's renewal for another three-year term in AzMT.

Risk Analysis (options or alternatives with implications): Insurance premiums would likely be higher if the Town were not members of AzMT.

Fiscal Impact (initial and ongoing costs; budget status): $0

Budget Reference (page number): NA

Budgeted; if No, attach Budget Adjustment Form: NA

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

Staff Recommendation(s): Approval of Resolution

List Attachment(s): Letter extending membership to Fountain Hills; AzMT Trust Membership Overview

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SUGGESTED MOTION (for Council use): Move to adopt Resolution #2019-21

Prepared by:

David Trimble

David Trimble, Administraive Services Director 3/20/2019

Director's Approval:

NA Date

Approved:

Grady E. Miller

Grady E. Miller, Town Manager Date

RESOLUTION 2019-21

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE RENEWAL OF THE TOWN OF FOUNTAIN HILLS' MEMBERSHIP IN THE ARIZONA METROPOLITAN TRUST

RECITALS:

WHEREAS, the Town of Fountain Hills (the "Town") is a participating entity in the Arizona Metropolitan Trust (the "Trust"); and

WHEREAS, the Town's term of membership as a participating entity shall expire on June 30, 2019; and

WHEREAS, the Trust's Board of Trustees (the "Trust Board") has offered a renewal membership to the Town commencing July 1, 2019; and

WHEREAS, the Town wishes to renew its membership as a participating entity in the Trust for a three (3) year membership period commencing July 1, 2019, and terminating June 30, 2022; and

WHEREAS, renewal of the Town's membership in the Trust will serve the interest of the Town and its employees.

ENACTMENTS:

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

SECTION 1. That the renewal of the Town's membership in the Trust for a period commencing July 1, 2019, and terminating June 30, 2022, is hereby authorized.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, this 2nd day of April, 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

AzMT **ARIZONA Metropolitan Trust**

February 26, 2019

HEALTHCARE IN YOUR HANDS

c/o ECA Inc.
1115 N Stockton Hill Rd.
Suite 101
Kingman, AZ 86401
928.753.4700 x 302
jaimes@ecollinsandassociates.com
www.azmt.org

Grady Miller, Town Manager
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Dear Grady:

As you know, the Arizona Metropolitan Trust Board of Trustees extended an offer to renew Fountain Hills' membership in the Trust for another three-year term beginning July 01, 2019.

Should you wish to accept this offer, please have your Town Council approve the attached Renewal Resolution and return to me by June 01, 2019. Should the Town decide they wish to leave AzMT at the end of the membership term, please notify me in writing by April 01, 2019.

We look forward to our continued partnership! Please let me know if you need anything further or have any questions.

Sincerely,
ERIN P. COLLINS & ASSOCIATES, INC.

Jaime L. Schulenberg
Pool Administrator

AzMT ARIZONA Metropolitan Trust

As of December 31, 2018

- Originally formed 07/01/12 by Apache Junction, Avondale, El Mirage and Youngtown

- Currently 11 members: Apache Junction, Avondale, Buckeye Valley Fire District, El Mirage, Fountain Hills, Litchfield Park, Maricopa, Paradise Valley, Pinal County, Sun City Fire District and Youngtown.

- Founding Premises

    - A home for public entities accessing care in the metro Phoenix area
    - Shift control from insurance companies (sellers) to members (purchasers)
    - Emphasize health promotion (Wellness) versus paying for illness

- Governance

    - Board of Trustees appointed by member entities
    - Equal voting and representation

- Differentiators from Other Pools

    - Direct Trustee Governance
    - Contracts Held in Name of Trust
        - Transparent
    - Unbundled
        - Each piece purchased separately
        - Increases flexibility in benefit design
        - Decreases costs
        - Increased control for plan sponsors
    - Surplus/Deficit
        - Allocated monthly from date of membership
        - Includes monthly adjustments for pro-rated "Profits" and losses
        - Interest income
        - Includes annual adjustment for pro-rated Incurred But Not Paid (IBNP)
        - Returned via formula upon departure

- Finances
    - "Run it like a business" recognize the Trust is a public entity, spending tax dollars
    - Risk Management (Business) Plan
    - Conservative funding (looking for stability and predictability)
    - Benefits and rates developed by Trust's actuary
    - Build surplus
        - Stabilizing factor for unusual claims activity
        - Rate cushion when structural changes occur
        - Health Care Reform
        - Economic downturns

- Results
    - Rate Increases Average 1.48% Since Inception (6 Years)
    - Steady growth of compatible members
    - "Clean" Audits every year since June 30, 2013
    - Anticipated "Clean" DOI Report of Examination
    - No litigation of any kind
    - **Financial Position as of 12/31/18:**
        - **Cash - $13,068,866**
        - **Surplus - $9,138,012**

ITEM 6-C

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Randy Harrel; Town Engineer; rharrel@fh.az.gov ; 480-816-5112

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF Resolution 2019-13, abandonment of the 10' Public Utility and Drainage Easement at the rear, and abandonment of a portion of the 20' Public Utility Easement and Drainage Easement at the northerly side of Plat 428, Block 2, Lot 59 (15013 N. Tanglewood Court), as recorded in Book 155, Page 19, records of Maricopa County, Arizona.. (EA 2019-04)

Applicant: Sam Ori (authorized agent)

Applicant Contact Information: 15013 N. Tanglewood Court; Fountain Hills, AZ 85268; Tele. 847-344-9768 ; E-mail: sam.ori@sbcglobal.net

Owner: Anthony L. Ori

Owner Contact Information: N/A

Property Location: Same

Related Ordinance, Policy or Guiding Principle: N/A

Staff Summary (background): This item on the Town Council's agenda is a proposal to abandon the pre-incorporation 10' Public Utility and Drainage Easement at the rear, and a portion of the 20' Public Utility and Drainage Easement at the northerly side, of Plat 428, Block 2, Lot 59.

All of the public utilities have approved of abandonment of this easement.

The applicant has submitted a building permit application (BP 2018-550) to construct a shed in his rear yard and a new retaining wall/pool fence wall along the southerly side of the lot, both lying partially within the existing rear easement. Staff's plan review comments had required the applicant to obtain this abandonment of the rear easement, prior to approval of that building permit application.

Staff has reviewed the site to determine any on-site drainage issues in addition to the Town's general interest in the easement. There is no need for the Town to retain the drainage easement proposed to be abandoned at the rear of the property and at the inner 15' width of the northerly side easement, with the understanding that the owners of Lot 59 are required to pass the developed flows generated by the upstream lots across their property.

Because of the proximity of the very steep slope down to Oxford Wash, Staff recommends retaining the northerly 5' of the northerly side's 20' PUE/DE. (This will align with the Drainage Easement previously retained on Lot 62, which lies at the rear of this lot. (MCR 1994-0849300.) This proposed retained easement lies generally outside of the applicant's existing northerly perimeter wall.)

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

Staff Recommendation(s): Staff recommends approval of Resolution 2019-13, abandonment of the 10' Public Utility Easement and Drainage Easement at the rear, and a portion of the 20' Public Utility Easement and Drainage Easement at the northerly side, of Plat 428, Block 2, Lot 59.

List Attachment(s): Vicinity Map; Aerial Photo Map (with contours); Resolution 2019-13 (with Exhibit A map).

SUGGESTED MOTION (for Council use): Move to approve Resolution 2019-13, abandonment of the 10' Public Utility and Drainage Easement at the rear, and abandonment of a portion of the 20' Public Utility Easement and Drainage Easement at the northerly side, both of Plat 428, Block 2, Lot 59.

Prepared by:

Randy L Harrel

Randy Harrel, Town Engineer 3/14/2019

Director's Approval:

Robert Rodgers, Development Services Director 3/19/2019

Approved:

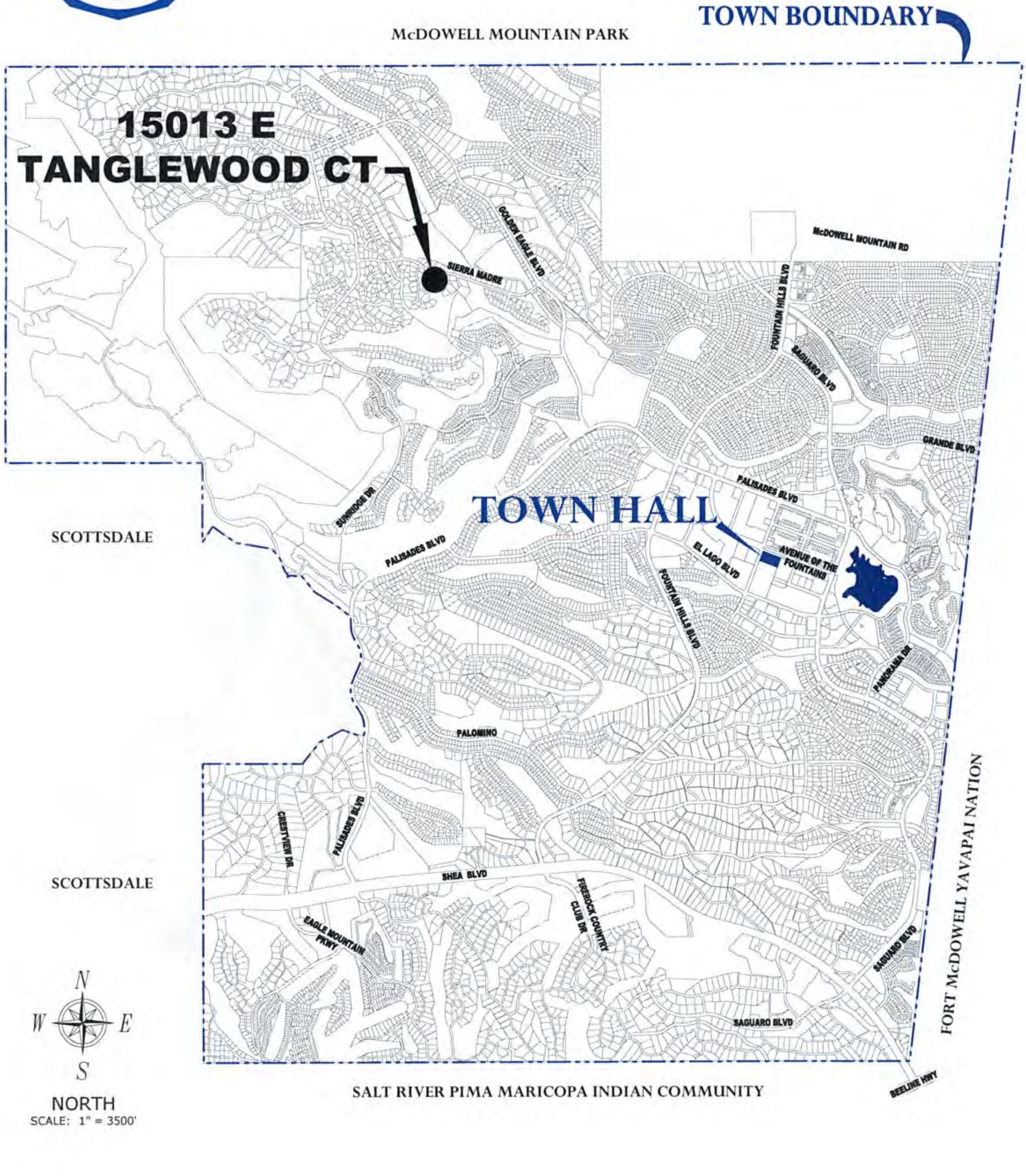
Grady E. Miller

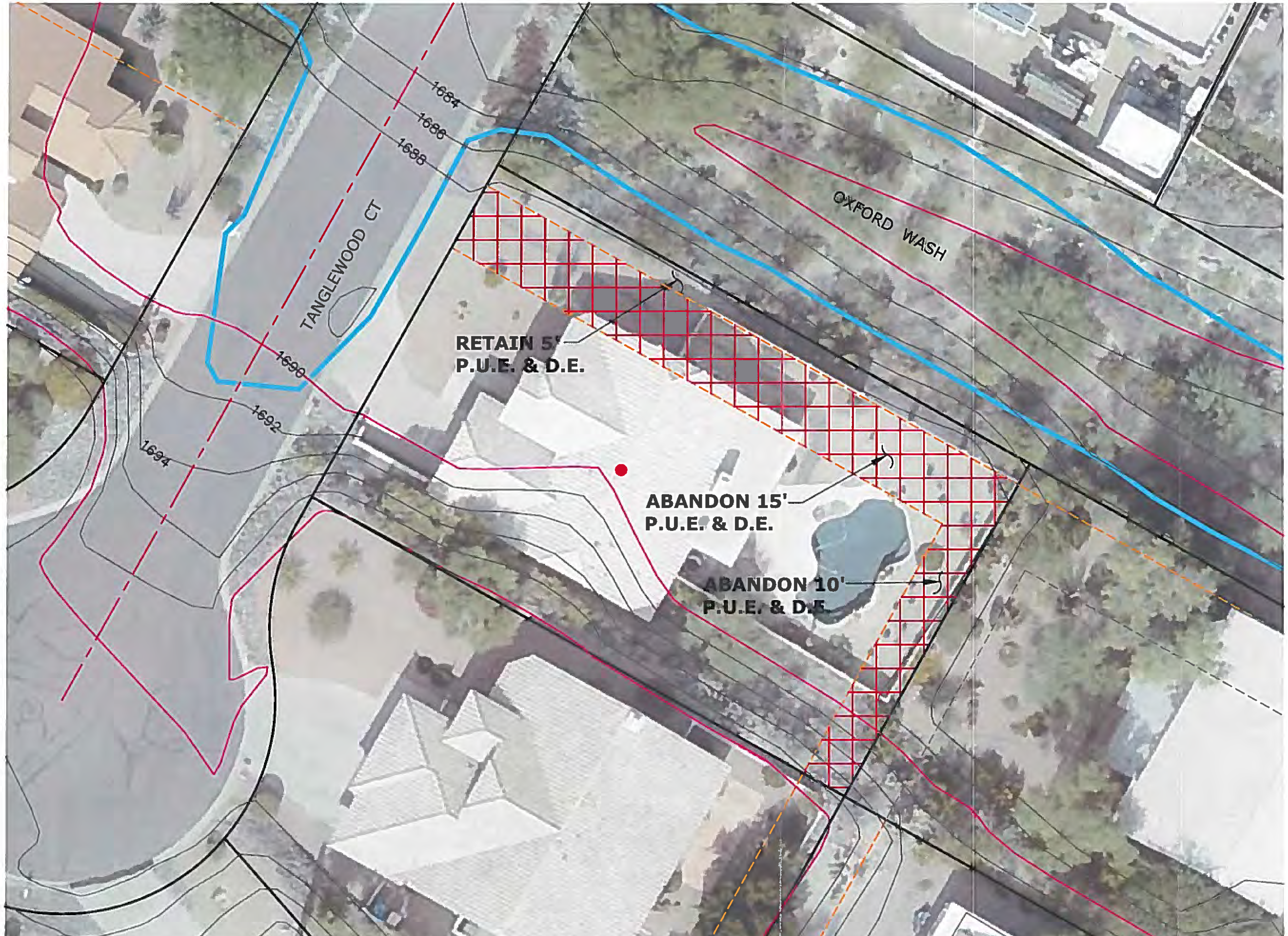
Grady E. Miller, Town Manager 3/20/2019

TOWN OF FOUNTAIN HILLS

DEVELOPMENT SERVICES DEPARTMENT

VICINITY MAP





TOWN OF FOUNTAIN HILLS INC. 1989 • All that is Arizona •

DEVELOPMENT SERVICES

2017 AERIAL SITE PLAN

PLAT: 428, BLOCK 2, LOT 59
15013 N TANGLEWOOD CT

ZONING: R1-8

LOT AREA:	10,280 SF
ROOF AREA:	2,940 SF

(AREAS ARE APPROXIMATE)

LOTLINE
RIGHT OF WAY
CENTERLINE
EASEMENT
ABAND. EASEMENT
CONTOUR 2ft
CONTOUR 10ft
FLOODPLAIN

SUBJECT HOUSE

N
W E
S

0 10' 20'

SCALE: 1" = 20'

- AERIAL PHOTO FLIGHT: 11/17
- TOPOGRAPICAL MAP: 9/91
- FEMA FLOOD DELINIATION: 10/13

THIS TOPO/AERIAL MAPPING IS SUITABLE FOR GENERAL PLANNING PURPOSES, BUT SHOULD NOT BE USED FOR DESIGN.

RESOLUTION 2019-13

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST IT HAS IN THE 10' PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR AND ABANDONMENT OF A PORTION OF THE 20' PUBLIC UTILITY AND DRAINAGE EASEMENT AT THE NORTHERLY SIDE PROPERTY LINE OF PLAT 428, BLOCK 2, LOT 59, FOUNTAIN HILLS, ARIZONA, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 155 OF MAPS, PAGE 19

RECITALS:

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council"), as the governing body of real property located in the Town of Fountain Hills (the "Town"), may require the dedication of public streets, sewer, water, drainage, and other utility easements or rights-of-way within any proposed subdivision; and

WHEREAS, the Town Council has the authority to accept or reject offers of dedication of private property by easement, deed, subdivision, plat or other lawful means; and

WHEREAS, all present utility companies have received notification of the proposed abandonment.

ENACTMENTS:

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

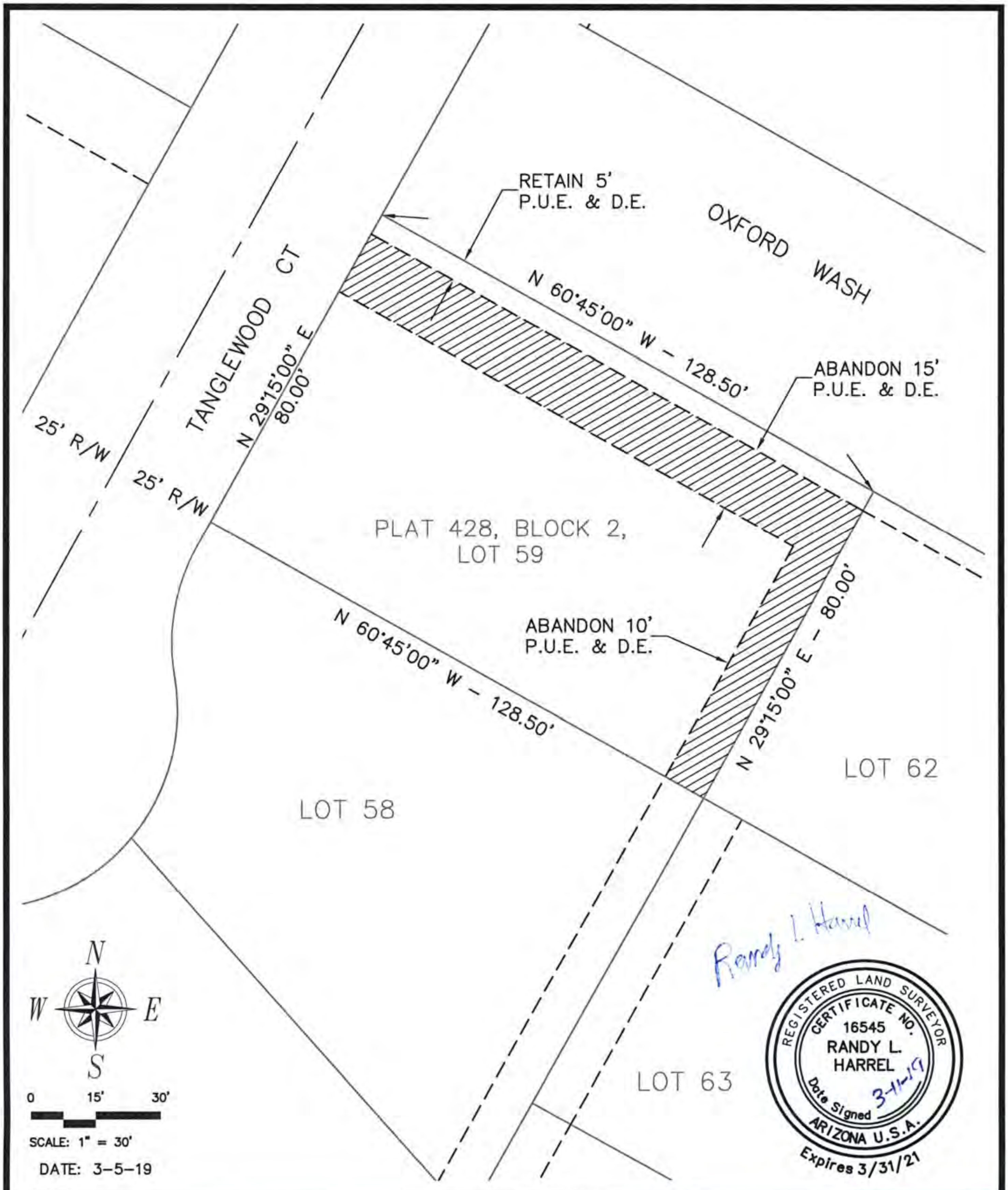
SECTION 1. That portions of the certain public utility and drainage easement, located at the rear and northerly side property lines of Plat 428, Block 2, Lot 59 (15013 N. Tanglewood Court) Fountain Hills, as recorded the Office of the County Recorder of Maricopa County, Arizona, Book 155 of Maps, Page 19, are hereby declared to be abandoned by the Town as shown in Exhibit A. Certain lots within this subdivision are subject to lot-to-lot drainage runoff. The property owner is required to pass the developed flows generated by the upstream lots across their property.

SECTION 2. That this Resolution is one of abandonment and disclaimer by the Town solely for the purpose of removing any potential cloud on the title to said property and that the Town in no way attempts to affect the rights of any private party to oppose the abandonment or assert any right resulting there from or existing previous to any action by the Town.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, this 2nd day of April, 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

TOWN OF FOUNTAIN HILLS
EASEMENT ABANDONMENT
EXHIBIT "A"
PLAT 428, BLOCK 2, LOT 59



ITEM 6-D

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Randy Harrel; Town Engineer; rharrel@fh.az.gov ; 480-816-5112

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF Resolution 2019-16, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 601-A, Block 1, Lot 16 (15842 E. Sunflower Drive), as recorded in Book 161, Page 44, records of Maricopa County, Arizona, with stipulation (EA 2019-05)

Applicant: Diane Jiang

Applicant Contact Information: 11035 N. Garland Circle, Fountain Hills, AZ 85268; Tele. 602-451-1650; E-mail: BLHomesLLC@gmail.com

Owner: Lau Construction Co.

Owner Contact Information: Same

Property Location: 15842 E. Sunflower Drive

Related Ordinance, Policy or Guiding Principle: N/A

Staff Summary (background): This item on the Town Council's agenda is a proposal to abandon the pre-incorporation 10' Public Utility and Drainage Easement at the rear of Plat 601-A, Block 1, Lot 16.

All of the public utilities have approved of abandonment of this easement.

The applicant should grant a 10'x10' Public Utility Easement at the southeast (front) corner of the lot, for existing and potential future utility boxes there.

Staff has reviewed the site to determine any on-site drainage issues in addition to the Town's general interest in the easement. There is no need for the Town to retain the drainage easement proposed to be abandoned at the rear of the property, with the understanding that the owners of Lot 16 are required to pass the developed flows generated by the upstream lots across their property.

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

Staff Recommendation(s): Staff recommends approval of Resolution 2019-16 abandonment of the 10' PUE/DE at the rear of Plat 601-A, Block 1, Lot 16, subject to the following stipulation:

* Grant a 10'x10 Public Utility Easement at the southeasterly (front) corner of the lot.

List Attachment(s): Aerial Photo Map; Resolution 2019-16

SUGGESTED MOTION (for Council use): Move to approve Resolution 2019-16, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 601-A, Block 1, Lot 16, with stipulation.

Prepared by:

Randy L Harrel

Randy Harrel, Town Engineer 3/14/2019

Director's Approval:

Robert Rodgers, Development Services Director 3/19/2019

Approved:

Grady E. Miller

Grady E. Miller, Town Manager 3/20/2019


ABANDON 10' PUE/DE
17616323
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4
SU
C
176
1761690
916914
2
15

RESOLUTION 2019-16

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST IT HAS IN THE 10' PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR PROPERTY LINE OF PLAT 601-A, BLOCK 1, LOT 16, FOUNTAIN HILLS, ARIZONA, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 161 OF MAPS, PAGE 44

RECITALS:

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council"), as the governing body of real property located in the Town of Fountain Hills (the "Town"), may require the dedication of public streets, sewer, water, drainage, and other utility easements or rights-of-way within any proposed subdivision; and

WHEREAS, the Town Council has the authority to accept or reject offers of dedication of private property by easement, deed, subdivision, plat or other lawful means; and

WHEREAS, all present utility companies have received notification of the proposed abandonment.

ENACTMENTS:

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

SECTION 1. That the certain public utility and drainage easement, located at the rear property line of Plat 601-A, Block 1, Lot 16 (15842 East Sunflower Drive) Fountain Hills, as recorded the Office of the County Recorder of Maricopa County, Arizona, Book 161 of Maps, Page 44, are hereby declared to be abandoned by the Town. Certain lots within this subdivision are subject to lot-to-lot drainage runoff. The property owner is required to pass the developed flows generated by the upstream lots across their property.

SECTION 2. That this Resolution is one of abandonment and disclaimer by the Town solely for the purpose of removing any potential cloud on the title to said property and that the Town in no way attempts to affect the rights of any private party to oppose the abandonment or assert any right resulting there from or existing previous to any action by the Town.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, this 2nd day of April, 2019.

FOR THE TOWN OF FOUNTAIN HILLS:

Ginny Dickey, Mayor

ATTESTED TO:

Elizabeth A. Burke, Town Clerk

REVIEWED BY:

Grady E. Miller, Town Manager

APPROVED AS TO FORM:

Aaron D. Arnson, Town Attorney

ITEM 6-E

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Randy Harrel; Town Engineer; rharrel@fh.az.gov ; 480-816-5112

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF Resolution 2019-19, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 603-A (Amended), Block 6, Lot 7 (15704 E. Sycamore Drive), as recorded in Book 196, Page 28, records of Maricopa County, Arizona; with stipulations. (EA 2019-07)

Applicant: Mike Foster

Applicant Contact Information: Tele. 480-695-6595; E-mail: mike@mikefostercustomhomes.com

Owner: Same

Owner Contact Information: Same

Property Location: Same

Related Ordinance, Policy or Guiding Principle: N/A

Staff Summary (background): This item on the Town Council's agenda is a proposal to abandon the pre-incorporation 10' Public Utility and Drainage Easement at the rear of Plat 403-A (Amended), Block 6, Lot 7.

All of the public utilities have approved of abandonment of this easement (except, Southwest Gas' approval letter only gave approval to "encroach" on the PUE).

The applicant should grant a 10'x10' Public Utility Easement at the southwesterly (front) lot corner for existing and potential future utility boxes there.

Staff has reviewed the site to determine any on-site drainage issues in addition to the Town's general interest in the easement. There is no need for the Town to retain the drainage easement proposed to be abandoned at the rear of the property, with the understanding that the owners of Lot 7 are required to pass the developed flows generated by the upstream lots across their property.

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

Staff Recommendation(s): Staff recommends approval of Resolution 2019-19 abandonment of the 10' PUE/DE at the rear of Plat 603-A (Amended), Block 6, Lot 7, subject to the following stipulations:

* Grant a 10'x10' Public Utility Easement at the southwesterly corner of the lot.
* Confirmation of approval by Southwest Gas, to abandon vs. to encroach on this easement area.

List Attachment(s): Aerial Photo Map (with contours); Resolution 2019-19.

SUGGESTED MOTION (for Council use): Move to approve Resolution 2019-19, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 603-A (Amended), Block 6, Lot 7, with stipulations.

Prepared by:

Randy Harrel, Town Engineer 3/20/2019

Director's Approval:

Robert Rodgers, Development Services Director 3/20/2019

Approved:

Grady E. Miller, Town Manager 3/20/2019

17616169
ABANDON 10' PUE/DE
17616833
17616834
176
7
15704
2008-0357293 E
15710

RESOLUTION 2019-19

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST IT HAS IN THE 10' PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR PROPERTY LINE OF PLAT 603-A, BLOCK 6, LOT 7, FOUNTAIN HILLS, ARIZONA, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 196, OF MAPS, PAGE 28

RECITALS:

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council"), as the governing body of real property located in the Town of Fountain Hills (the "Town"), may require the dedication of public streets, sewer, water, drainage, and other utility easements or rights-of-way within any proposed subdivision; and

WHEREAS, the Town Council has the authority to accept or reject offers of dedication of private property by easement, deed, subdivision, plat or other lawful means; and

WHEREAS, all present utility companies have received notification of the proposed abandonment.

ENACTMENTS:

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

SECTION 1. That the certain public utility and drainage easement, located at the rear property line of Plat 603-A, Block 6, Lot 7 (15704 E. Sycamore Drive) Fountain Hills, as recorded the Office of the County Recorder of Maricopa County, Arizona, Book 196 of Maps, Page 28, are hereby declared to be abandoned by the Town. Certain lots within this subdivision are subject to lot-to-lot drainage runoff. The property owner is required to pass the developed flows generated by the upstream lots across their property.

SECTION 2. That this Resolution is one of abandonment and disclaimer by the Town solely for the purpose of removing any potential cloud on the title to said property and that the Town in no way attempts to affect the rights of any private party to oppose the abandonment or assert any right resulting there from or existing previous to any action by the Town.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, this 2nd day of April, 2019.

FOR THE TOWN OF FOUNTAIN HILLS:

Ginny Dickey, Mayor

ATTESTED TO:

Elizabeth A. Burke, Town Clerk

REVIEWED BY:

Grady E. Miller, Town Manager

APPROVED AS TO FORM:

Aaron D. Arnson, Town Attorney

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Randy Harrel; Town Engineer; rharrel@fh.az.gov ; 480-816-5112

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF Resolution 2019-20, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 431, Block 5, Lot 16 (17336 E. El Pueblo Blvd.), as recorded in Book 151, Page 43, records of Maricopa County, Arizona.. (EA 2019-09)

Applicant: Kristina M. Polich

Applicant Contact Information: 17336 E. El Pueblo Blvd., Fountain Hills, AZ. 85268; Tele. 480-205-6025; E-mail: kmp85268@yahoo.com

Owner: Same

Owner Contact Information: Same

Property Location: Same

Related Ordinance, Policy or Guiding Principle: N/A

Staff Summary (background): This item on the Town Council's agenda is a proposal to abandon the pre-incorporation 10' Public Utility and Drainage Easement at the rear of Plat 431, Block 5, Lot 16.

All of the public utilities have approved of abandonment of this easement.

Staff has reviewed the site to determine any on-site drainage issues in addition to the Town's general interest in the easement. There is no need for the Town to retain the drainage easement proposed to be abandoned at the rear of the property, with the understanding that the owners of Lot 16 are required to pass the developed flows generated by the upstream lots across their property.

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

Staff Recommendation(s): Staff recommends approval of Resolution 2019-20, abandonment of the 10' PUE/DE at the rear of Plat 431, Block 5, Lot 16.

List Attachment(s): Aerial Photo Map (with contours); Resolution 2019-20 (with Exhibit A map).

SUGGESTED MOTION (for Council use): Move to approve Resolution 2019-20, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 431, Block 5, Lot 16.

Prepared by:

Randy Harrel, Town Engineer 3/14/2019

Director's Approval:

Robert Rodgers, Development Services Director 3/19/2019

Approved:

Grady E. Miller, Town Manager 3/20/2019

17345
17604538
ABANDON 10' PUE & DE
17604540
4541
04537
17604539
16
17336
173

RESOLUTION 2019-20

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST IT HAS IN THE 10' PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR PROPERTY LINE OF PLAT 431, BLOCK 5, LOT 16, FOUNTAIN HILLS, ARIZONA, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 151, OF MAPS, PAGE 43

RECITALS:

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council"), as the governing body of real property located in the Town of Fountain Hills (the "Town"), may require the dedication of public streets, sewer, water, drainage, and other utility easements or rights-of-way within any proposed subdivision; and

WHEREAS, the Town Council has the authority to accept or reject offers of dedication of private property by easement, deed, subdivision, plat or other lawful means; and

WHEREAS, all present utility companies have received notification of the proposed abandonment.

ENACTMENTS:

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

<u>SECTION 1</u>. That the certain public utility and drainage easement, located at the rear property line of Plat 431, Block 5, Lot 16 (17336 E. El Pueblo Blvd.) Fountain Hills, as recorded the Office of the County Recorder of Maricopa County, Arizona, Book 151, of Maps, Page 43, are hereby declared to be abandoned by the Town as shown in Exhibit A. Certain lots within this subdivision are subject to lot-to-lot drainage runoff. The property owner is required to pass the developed flows generated by the upstream lots across their property.

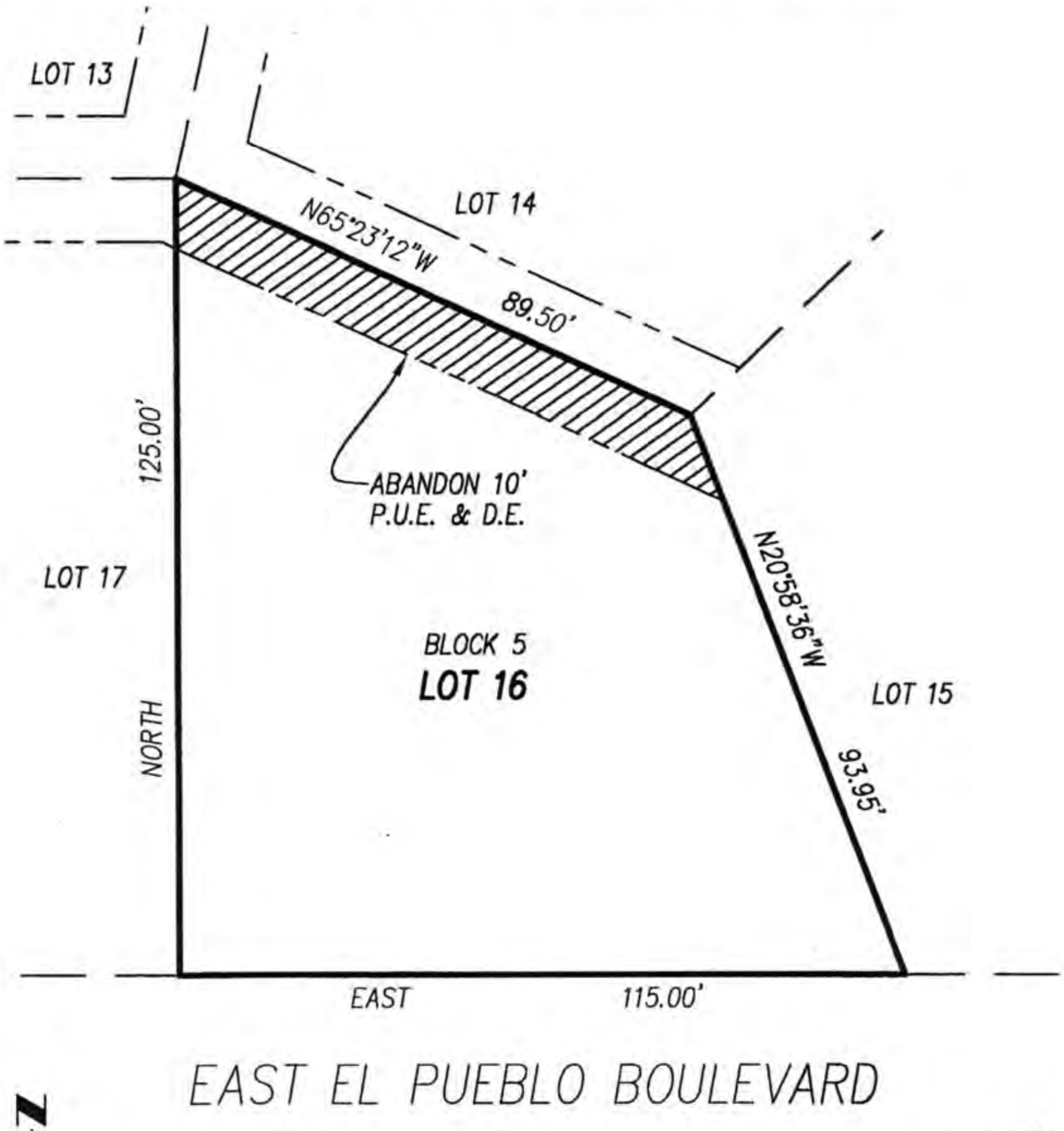
<u>SECTION 2</u>. That this Resolution is one of abandonment and disclaimer by the Town solely for the purpose of removing any potential cloud on the title to said property and that the Town in no way attempts to affect the rights of any private party to oppose the abandonment or assert any right resulting there from or existing previous to any action by the Town.

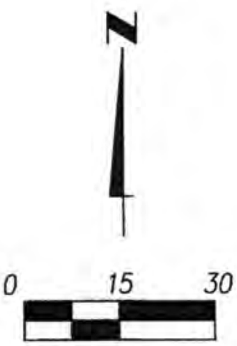
PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, this 2nd day of April, 2019.

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

TOWN OF FOUNTAIN HILLS
EASEMENT ABANDONMENT
EXHIBIT "A"

FOUNTAIN HILLS PLAT NO. 431, BLOCK 5, LOT 16





SCALE: 1" = 30'

DATE: 11/21/18

EXPIRES 6/30/20

ITEM 7-A

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019
Agenda Type: Regular

Meeting Type: Regular Session
Submitting Department: Fire Department

Staff Contact Information: Dave Ott, Chief 480 816-5280

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF approval of Contract C2019-068 with ZOLL Medical in the amount of $94,499.06 for three replacement defibrillators, associated equipment and preventive maintenance.

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): The purchase is being made through the Tucson Procurement Cooperative Agreement. The defibrillators are budgeted for in the Facilities Replacement Fund. The ZOLL Medical price also reflects a $13,500.00 credit for trade in of our three existing devices. The price also includes a three year preventive maintenance agreement.

Risk Analysis (options or alternatives with implications): The current defibrillators are nearing their End of Life (EOL) cycle and will no longer be serviceable or supported by their supplier.

Fiscal Impact (initial and ongoing costs; budget status): The $94,449.06 includes a three year preventive maintenance plan.

Budget Reference (page number): See Attached

Funding Source: FY 18-19 Facilities Replacement 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): Staff recommends approval of Contract C2019-068.

List Attachment(s): ZOLL Medical bid and contract.

SUGGESTED MOTION (for Council use): Approve Contract C2019-068 with ZOLL Medical in the amount of $94,499.06 for the purchase of three X Series defibrillators, associated equipment and preventive maintenance.

Director's Approval:

Dave Ott, Fire Chief 3/25/19

Approved:

Grady E. Miller, Town Manager 3/25/2019

Facilities Replacement: FY18-19 approved items and on-hold items

Town Hall		**$1,878,443** fy18-19 with transfer -in
$ 62,237	Interior Painting	
$ 95,481	Carpet Replacement	
Community Center		
$ 196,690	Exterior Paint	
	Civic Center Parking Lot Light Painting	
	Civic Center Shade Canopy Pole Painting	
	Civic Center Site Wall Painting	
$ 163,000	Carpet Replacement/Moisture Remediation	
$ 32,782	Cooking Equipment Replacement*	
$ 10,000	Irrigation Controller - Replace	
Library/Museum		
	Exterior Paint (see community center)	
Physical Plant		
Fire Stations		
$ 41,200	AED Replacements (verify with Fire Dept.)	(review annually)
$ 45,895	Vehicle Radio Replacement	
$ 87,418	Defibrillator Replacement	
$ 8,500	Parking Lot Mill & Overlay	
Fountain Park		
$ 15,000	Irrigation Pump/Motors - Rebuild	
$ 24,000	Picnic Table - Replacement	
$ 75,000	Benches - Replace	
Golden Eagle Park		
$ 95,400	Backstop - Replacement	
$ 60,000	Refurbish Irrigation System - (ongoing -$74,000 original budget)	
$ 21,218	Firtigation - Replacement	
Four Peaks Park		
$ 111,395	Irrigation system - Replace	
$ 70,000	Backstop - Replacement	
$ 104,000	Playground Equipment	
Desert Vista Park		
$ 13,493	Shade Structures - Replace	(review annually)
$ 759,026	Approved Expenditures	
$ 563,683	On-Hold	
$ 1,322,709	Total	

Contract No. 2019-068

COOPERATIVE PURCHASING AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND ZOLL MEDICAL CORPORATION

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of March 19, 2019, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and ZOLL Medical Corporation, a Massachusetts corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Tucson, Arizona ("Tucson") entered into Contract No. 171769-01, dated September 18, 2017, as amended by that Amendment No. 1, dated March 12, 2018 (collectively, the "Tucson Contract"), for the provision of cardiac monitoring equipment, defibrillators, and related equipment and maintenance services. A copy of the Tucson Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the Tucson Contract, at its discretion and with the agreement of the awarded Contractor, and the Tucson Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Tucson Contract and this Agreement, (ii) establishing the terms and conditions by which the Town may purchase three defibrillators and related equipment and maintenance services (the "Materials and Services"), and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the 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. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until September 17, 2019 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Tucson Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a "Renewal Term") if: (i) it is deemed in the best interests of the Town, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Tucson Contract has not expired or has been extended, (iii) at least 30 days prior to the end of the then-current term

of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the Town approves the additional one-year term in writing (including any price adjustments approved as part of the Tucson Contract), as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall provide the Town with the Materials and Services under the terms and conditions of the Tucson Contract and as more particularly set forth in the Contractor Proposal attached hereto as Exhibit B and incorporated herein by reference.

2.1 Inspection; Acceptance. All Materials and Services are subject to final inspection and acceptance by the Town. Materials failing to conform to the requirements of this Agreement and/or the Tucson Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Materials or Services, the Town may return the Materials to the Contractor, after which the Contractor may elect to, at Contractor's sole discretion, repair, replace, or exchange the non-conforming product.

3. Compensation. The Town shall pay Contractor for the Materials and Services an aggregate amount not to exceed $94,449.06 for the Materials and Services at the rates set forth in the Tucson Contract and as more particularly set forth in the Contractor Proposal.

4. Payments. The Town shall pay the Contractor Net 30 based upon receipt of conforming Materials and/or Services proper invoices. Each invoice shall (i) contain a reference to this Agreement and the Tucson Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of materials shipped, time expended, and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Tucson Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any 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 evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below, once per year. To the extent necessary for the Town to audit Records as set forth in this Section, 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 Section. 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 Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

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

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 Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

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

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Contractor Proposal, the Tucson Contract, and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in

conflict with the terms of this Agreement or the Tucson Contract (collectively, the "Unauthorized Conditions"), other than the Town's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any work order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Tucson Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Rights and Privileges. To the extent provided under the Tucson Contract, the Town shall be afforded all of the rights and privileges afforded to Mesa and shall be the "City" (as defined in the Tucson Contract) for the purposes of the portions of the Tucson Contract that are incorporated herein by reference.

13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to the City to the extent provided under the Tucson Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance to the fullest extent.

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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) 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 E. Falcon Drive, Suite 111 Mesa, Arizona 85215 Attn: Aaron D. Arnson, Town Attorney
If to Contractor:	ZOLL Medical Corporation 269 Mill Road Chelmsford, Massachusetts 01824 Attn: Contract Department

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: (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) 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.

[SIGNATURES APPEAR 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

3/5/19

____
Grady E. Miller, Town Manager

ATTEST:

____
Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

____
Aaron D. Arnson, Town Attorney

(ACKNOWLEDGEMENT)

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"

ZOLL MEDICAL CORPORATION,
a(n) Massachusetts corporation

By: ______________________

Name: Michael Trotter

Its: VP of EMS Sales

(ACKNOWLEDGEMENT)

STATE OF Massachusetts)
) ss.
COUNTY OF Middlesex)

On March 11, 2019, before me personally appeared Michael Trotter, the VP of EMS Sales of ZOLL MEDICAL CORPORATION, a Massachusetts 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 corporation.

Emily Marie Sullivan
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires November 14, 2025

(Affix notary seal here)

____
Notary Public

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
ZOLL MEDICAL CORPORATION

[Tucson Contract]

See following pages.

Business Associate Agreement
Between
The City of Tucson and ZOLL Data Systems, Inc.

This Agreement is entered into between the City of Tucson (hereinafter "Covered Entity" or "City of Tucson") and ZOLL Data Systems Inc. (hereinafter "Business Associate" or "BA").

This Agreement is incorporated into all existing and current contract(s) between the parties (the "Underlying Contract(s)") under which Business Associate is carrying out activities or functions involving the use of protected health information (PHI), as this term is defined in 45 CFR Parts 160 and 164, and it replaces any prior agreement(s) entered concerning such PHI. Business Associates must comply with all requirements for protecting PHI under federal Privacy and Information Security regulations and are subject to the application of civil and criminal penalties under sections 1176 and 1177 of the Social Security Act. Covered Entity is committed to providing high quality patient care, education, and research. In furtherance of its mission, Covered Entity wishes to conduct transactions involving the disclosure of PHI to Business Associate for the purpose of conducting the activities set forth in the Underlying Contract(s).

Some or all of the information to be disclosed is required by law to be protected against unauthorized use, disclosure, modification or loss. In order to comply with applicable legal requirements for the protection of information, the parties agree as follows:

A. ALLOWABLE USES OF PHI

Only the minimum necessary PHI to accomplish the intended purpose of this agreement can be used or disclosed only for the following purposes:

1. Support of the TFD RescueNet suite of applications.
2. ______________________________

B. OBLIGATIONS OF BUSINESS ASSOCIATE

Section 1. **Safeguarding Information.**

A. Business Associate shall only use, store, disclose, or access PHI:

(1) In accordance with, and only to the extent permissible under the Underlying Contract; and

(2) In full compliance with any and all applicable laws, regulations, rules or standards, including, but without limitation, FERPA, HIPAA, the Gramm-Leach-Bliley Financial Services Modernization Act (GLB), the Federal Trade Commission Identity Theft Rules, the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Social Security Act, RCW 19.255.010 and RCW 42.56.590.

B. Business Associate shall have in place policies and procedures to implement and maintain all safeguards necessary to ensure the confidentiality, availability, and integrity of all Covered Entity data. Such safeguards shall include as deemed appropriate by Business Associate, and without limitation, use of: policies and procedures to prevent any unauthorized use or disclosure of, or access to, PHI; restrictions on administrative access to PHI; system firewalls, secure network and transfer protocols such as Secure Socket Shell (SSH), Secure Copy Protocol (SCP), Hyper-Text Transfer Protocol over Secure Sockets Layer (HTTPS), or Internet Protocol Security (IPSec); industry compliant network authentication protocols such as Kerberos or Lightweight Directory Access Protocol (LDAP); encryption; regular and timely system upgrades, including implementation of security patches; disk quotas to ensure system availability; logging in accordance with City of Tucson specifications (as communicated by City of Tucson to Business Associate in writing), maintenance of logs on centralized servers; and backup systems for disaster recovery, security, and forensics purposes.

Section 2. <u>Use or disclosure of Protected Health Information</u>.

Business Associate shall not use or disclose PHI received from Covered Entity in any manner that would constitute a violation of federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and any regulations enacted pursuant to its provisions ("HIPAA Standards"), or applicable provisions of Arizona state law. Business Associate shall ensure that any use or disclosure by its directors, officers, employees, contractors, and agents of PHI received from Covered Entity, or created or received on behalf of Covered Entity is in accordance with the provisions of this Agreement and applicable federal and state law. Business Associate shall not use or disclose PHI in any manner other than that permitted or required by the Covered Entity for the purpose of accomplishing services to or on behalf of Covered Entity in accordance with the Underlying Contracts. Notwithstanding the foregoing, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate and to carry out its legal responsibilities; provided that such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. In addition, Business Associate may use or disclose PHI received or created by it to provide data aggregation functions to Covered Entity as permitted by HIPAA Standards.

Section 3. <u>Reporting of Unauthorized Use or Disclosure of PHI</u>.

Business Associate shall, within five (5) business days of becoming aware of an unauthorized use or disclosure of PHI by Business Associate, its officers, directors, employees, contractors, agents or by a third party to which Business Associate disclosed PHI, report any such disclosure to Covered Entity. Such notice shall be made to the following:

The City Attorney
City of Tucson
255 West Alameda Street
Tucson, AZ 85701

Section 4. **Agreements by Third Parties.**

Business Associate shall obtain satisfactory assurances from any agent or subcontractor who will have access to PHI that is received from Covered Entity, or created or received on behalf of the Covered Entity, and shall ensure that the agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Business Associate through this Agreement with respect to PHI. Business Associate shall require that any agent or subcontractor notify Business Associate of any instances in which PHI is used or disclosed in an unauthorized manner. Business Associate agrees to notify Covered Entity of any such unauthorized use or disclosure. Business Associate shall take steps to cure the breach of confidentiality and end the violation, or shall terminate the agency agreement or subcontract.

Section 5. **Access to Information.**

If Business Associates maintains Designated Record Set (DRS) documentation on behalf of Covered Entity, Business Associate agrees to provide access to the documentation maintained by the Covered Entity. Business Associate shall make available to Covered Entity such information for so long as it is maintained. If any individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to the Covered Entity. Business Associate shall not deny any individual's request for access to the individual's PHI. A denial of access to PHI requested is the responsibility of the Covered Entity.

Section 6. **Availability of PHI for Amendment.**

Within five (5) business days of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a DRS (for so long as the PHI is maintained in the DRS), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

Section 7. **Accounting of Disclosures.**

Business Associate agrees to implement an appropriate record keeping and reporting process to enable it to provide the following information regarding disclosures of PHI: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. If Business Associate receives a request for an accounting of disclosures, Business Associate shall forward such request to Covered Entity within a reasonable time frame to allow Covered Entity to prepare and deliver any required accounting of disclosures.

Section 8. Restrictions on Certain Disclosure of Health Information.

Business Associate agrees to restrict the disclosure of the protected health information of an individual, if Covered Entity agrees to a requested restriction by an individual. If Business Associate receives a request for a restriction, Business Associate shall forward such request to Covered Entity within five business days to allow Covered Entity to respond to the requested restriction.

Section 9. Availability of Books and Records.

Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity, or created or received on behalf of Covered Entity, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Covered Entity's and Business Associate's compliance with the HIPAA Standards. Business Associate shall provide to Covered Entity a copy of any documentation that Business Associate provides to the Secretary within five business days, which documentation and information contained therein shall be kept strictly confidential by Covered Entity.

Section 10. Return or Destruction of Information.

At the termination of the Underlying Contract(s), Business Associate shall return or destroy all PHI received from Covered Entity, or created or received on behalf of Covered Entity, that Business Associate maintains in any form. Business Associate will retain no copies of PHI. If Business Associate determines that return or destruction of any PHI is not feasible, Business Associate shall notify Covered Entity of the reasons why return or destruction is not feasible. If destruction or return of PHI is not feasible, Business Associate shall not use PHI received from Covered Entity, or created or received on behalf of Covered Entity, in a manner other than those permitted or required by state and federal laws or for the purposes described herein.

Section 11. Electronic Protected Health Information ("ePHI").

If Business Associate creates, receives, maintains or transmits ePHI on behalf of Covered Entity, Business Associate agrees to (1) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Covered Entity's ePHI in accordance with Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations; (2) ensure that any third party agent or subcontractor who receives Covered Entity's ePHI from Business Associate agrees to implement equivalent administrative, physical and technical safeguards; and (3) deploy appropriate safeguards to implement the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards; and (4) report any security incidents involving Covered Entity's ePHI within five business days of discovery.

Section 12. **Potential Breach of PHI.**

A. If Business Associate has reason to believe that personal information or PHI transmitted pursuant to this Agreement may have been accessed, disclosed, or acquired without proper authorization, Business Associate will, within fifteen business days of discovery, give City of Tucson notice and use commercially reasonable efforts to take actions as may be necessary to identify, mitigate and remediate the cause of the breach. A breach shall be treated as discovered by the BA as of the first day on which such breach is known to the BA, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the BA) or should reasonably have been known to the BA (or person referenced above) to have occurred. Business Associate shall use commercially reasonable efforts to mitigate and remediate any unauthorized access and shall devote such resources as may be reasonably practicable to accomplish that goal. The BA shall cooperate with all Covered Entity efforts, including providing any and all information necessary to enable Covered Entity to fully understand the nature and scope of the unauthorized access, including but not limited to identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach.

B. To the extent City of Tucson deems warranted, City of Tucson may provide notice to any or all individuals affected by any unauthorized access, whose personal and/or PHI may have been improperly accessed or disclosed that was not protected according to the Secretary of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards. In the event that the Business Associate's assistance is required to reinstall software, such assistance shall be provided at no cost to Covered Entity and in accordance with the Covered Entity's policies and standards. Business Associate must coordinate with City of Tucson any public notification to any individual, media outlet, or the Secretary of Health and Human Services.

If City of Tucson determines that notification is required, the BA will supply City of Tucson Compliance with the following information:

(1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

(2) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).

(3) A brief description of what the BA is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.

C. Business Associate shall indemnify, hold harmless, and defend City of Tucson from and against any penalties, loss, liability, damage, costs, or expenses, including but not limited to reasonable attorneys' fees, arising from or pertaining to third-party claims or actions arising from Business Associate's breach of this agreement or the violation by Business Associate of any state or federal law applicable to the use, disclosure or protection of personal information or PHI.

D. City of Tucson has the right, at any time, to monitor, audit, and review activities and methods in implementing this Agreement in order to assure compliance therewith, within the limits of Business Associate's technical capabilities.

C. Miscellaneous.

Section 13. Limitation on Liability.

In no event will Business Associate be liable hereunder for any consequential, indirect, exemplary, special, punitive or incidental damages, including any lost data, lost profits, and costs of procurement of substitute goods or services, arising from or relating to this Agreement; however caused and under any theory of liability (including negligence), even if Business Associate has been advised of the possibility of such damages.

Section 14. Termination.

Notwithstanding any provision to the contrary in the Underlying Contract(s), Covered Entity may terminate its participation in the Underlying Contract(s) immediately upon written notice to Business Associate without liability for such termination, in the event that Covered Entity determines that Business Associate has violated a material provision of this Agreement.

Section 15. De-identified Health Information.

Business Associate may de-identify any and all PHI and may create a "Limited Data Set" in accordance with 45 C.F.R. § 164.514(b)&(e). Covered Entity acknowledges and agrees that de-identified information is not PHI and that Business Associate may use such de-identified information for any lawful purpose. Use or disclosure of a Limited Data Set must comply with 45 CFR 164.514(e).

Section 16. Third Party Beneficiaries.

Nothing in this Addendum is intended to create any third party beneficiaries.

Section 17. Definitions.

Personal Information means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(a) Social security number;

(b) Driver's license number or Arizona identification card number; or

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

Breach of the security of the system means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency.

All terms not otherwise defined herein shall be defined in accordance with 45 CFR Parts 160 and 164.

ZOLL Data Systems, Inc.

By:

[signature]	CFO	12/10/13
Signature	Position	Date

[signature]	Contract Administrator	12/9/13
Signature	Position	Date

ZOLL®

TO: Fountain Hills Fire Department
16426 E Palisades Boulevard
Fountain Hills, AZ 85268

Attn: **Jason Payne**

email: **jpayne@fh.az.gov**

Tel: 602-541-4742

ZOLL Medical Corporation
Worldwide HeadQuarters
269 Mill Rd
Chelmsford, Massachusetts 01824-4105
(978) 421-9655 Main
(800) 348-9011
(978) 421-0015 Customer Support
FEDERAL ID#: 04-2711626

QUOTATION 293815 V:1

DATE: December 11, 2018

TERMS: Net 30 Days

FOB: Shipping Point

FREIGHT: Prepay and Add

ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
1	601-2231011-01	**X Series ® Manual Monitor/Defibrillator $14,995** with 4 trace tri-mode display monitor/ defibrillator/ printer, comes with Real CPR Help®, advisory algorithm, advanced communications package (Wi-Fi, Bluetooth, USB cellular modem capable) USB data transfer capable and large 6.5"(16.5cm) diagonal screen, full 12 ECG lead view with both dynamic and static 12-lead mode display. **Accessories Included:** • MFC cable • MFC CPR connector • A/C power adapter/ battery charger • A/C power cord • One (1) roll printer paper • 6.6 Ah Li-ion battery • Carry case • Declaration of Conformity • Operator's Manual • Quick Reference Guide **• One (1)-year EMS warranty** **Advanced Options:** **Real CPR Help Expansion Pack $995** CPR Dashboard quantitive depth and rate in real time, release indicator, interruption timer, perfusion performance indicator (PPI) • See - Thru CPR artifact filtering	3	$40,020.00	$28,434.00	$85,302.00 *

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Barry Herbert
Territory Manager
480-793-1388

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TO: Fountain Hills Fire Department
16426 E Palisades Boulevard
Fountain Hills, AZ 85268

Attn: **Jason Payne**

email: **jpayne@fh.az.gov**

Tel: 602-541-4742

QUOTATION 293815 V:1

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
		ZOLL Noninvasive Pacing Technology: $2,550 **Masimo Pulse Oximetry** **SP02 & SpCO $4,540** • Signal Extraction Technology (SET) • Rainbow SET (for SpCO & SpMet) **NIBP Welch Allyn includes: $3495** • Smartcuff 10 foot Dual Lumen hose • SureBP Reusable Adult Medium Cuff **End Tidal Carbon Dioxide monitoring (ETCO2) $4,995** **Oridion Microstream Technology:** Order required Microstream tubing sets separately **Interpretative 12- Lead ECG: $8,450** • 12-Lead one step ECG cable- includes 4- Lead limb lead cable and removable precordial 6- Lead set					
2	8300-0500-01	**SurePower 4 Bay Charging System including 4 Battery Charging adapters**	2	$2,583.00	$1,808.10	$3,616.20	*
3	8000-0580-01	**Six hour rechargeable Smart battery**	6	$495.00	$346.50	$2,079.00	*

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ZOLL

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE	
4	8000-0341	**SpO2/SpCO/SpMet Rainbow Resuable Patient Cable: Connects to Single Use Sensors (4 ft)**	3	$245.00	$171.50	$514.50	*
5	8000-000371	**SpO2/SpCO/SpMet Rainbow DCI Adult Reusable Sensor with connector (3 ft)**	3	$845.00	$591.50	$1,774.50	*
6	8000-0895	**Cuff Kit with Welch Allyn Small Adult, Large Adult and Thigh Cuffs**	3	$157.50	$110.25	$330.75	**
7	8009-0020	**CPR-D Padz and CPR Stat Padz Connector for R Series**	3	$375.00	$262.50	Optional	*
8	8300-000676	**OneStep Cable, X Series**	3	$425.00	$297.50	$892.50	*
9	8900-000220-01	**OneStep Pediatric CPR Electrode (8 per case)**	1	$650.00	$445.00	$445.00	*
10	8900-0400	***CPR stat•padz*** HVP Multi-Function CPR Electrodes - 8 pair/case	1	$560.00	$392.00	$392.00	*
11	8000-000535-01	Multi- Tech Cell Modem, External Antenna Kit, CDMA (reference: 9355-000384, MTC-EV3-BO3-N3-ZOLL), Loaner (includes a no charge upgrade to 4G)	3	$895.00	$626.50	$1,879.50	**

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ITEM	MODEL NUMBER	DESCRIPTION	QTY.	UNIT PRICE	DISC PRICE	TOTAL PRICE
12	8778-0106	**3 Year Extended Warranty (at time of equipment sale)**	3	$2,730.00	$2,730.00	$8,190.00
13	8778-0116	**3 Year, 1 Preventative Maintenance (at time of equipment sale)**	3	$690.00	$690.00	$2,070.00
14	7800-0214	**MRX Biphasic w/Pacing, 12 lead + 3 parameters Trade-In**	3		($4,500.00)	($13,500.00) ***
15		Estimated Sales Tax at 8.9%				$8,653.11
		***Reflects City of Tucson Contract Pricing.** ****Reflects Discount Pricing.** *****Trade-In Value valid if all equipment purchased is in good operational and cosmetic condition, and includes all standard accessories. Customer assumes responsibility for shipping trade-in equipment to ZOLL Chelmsford within 60 days of receipt of new equipment. Customer agrees to pay cash value for trade-in equipment not shipped to ZOLL on a timely basis.** *****Trade value guaranteed only through December 31, 2018.**				

TOTAL **$94,449.06**

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CONTRACT/GRANT INFORMATION SHEET - NEW CONTRACT

Date: 3/4/2019			
Staff's Name: Dave Ott	Department: Fire Department		
Vendor's Name: ZOLL Medical		Vendor Number:	1825
Address:269 Mill Rd., Chelmsford, MA 01824-4105			
Phone:800 348-9011			
Received W9: [X] Y [ ] N [ ] ALREADY IN SYSTEM			
Business License #:8207	Exp. Date: 2/28/2020		

ACCOUNTING SUMMARY	Org	Object	Project/#	$
Accounting Code:				
Accounting Code:				
Accounting Code:				
TBD(used for variety of different things/departments/funds):	Choose an item.			

CONTRACT SUMMARY

Contract Number Assigned:	**C2019-068**			
Current Contract Total:	$94,499.06	Total Contract Amount with Renewals:		
Brief Description of Service:	Three year preventive maintenance.			
If Renewable:	Choose an item.	Total # of Renewals Max:	Choose an item.	
FY Cumulative Vendor Totals:	Does this Contract put it over $50,000	[X] Yes	[ ] No	
Contract Beginning Date:	3/20/2019			
Contract Expiration Date:	3/21/2022			
Budgeted Expenditure:	[X] Yes	[ ] No		
Budget Page #:	Facilities Replacement Fund			
Approved by Council:	[X] Yes; Date: 3/19/2019	[ ] No	[ ] N/A	
Insurance Certificate provided:	[ ] Yes	[ ] No	[X] N/A	
Warranty Period:	[X] Yes	[ ] No	If Yes, expires 3/21/2022	
Estimated Start Date:	Click here to enter a date.			
Estimated Completion Date:	Click here to enter a date.			

GRANT SUMMARY

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

REQUEST FOR LEGAL SERVICES

Name/Phone Number/E-mail of Requestor: **Dave Ott/5280/dott@fh.az.gov**	**Date of Request:** 2/13/2019 **Date Director Approved Request:** 2/13/2019
Procurement Approval by: Craig Rudolphy 2/27/2019 **Yes** ☒ **No:** ☐ - Contact Finance Director	**Due Date (From Town Attorney's office):** 2/27/2019 • **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: 3/19/2018 Item **does not** require Council approval ☐	

Request for Legal staff: Please review and comment on a CPA with Zoll Medical for defibrillators purchased on the Tucson Procurement Coop.https://www.tucsonprocurement.com/coop_partners.aspx

Proposed Agenda Language (if applicable): Consent Agenda Item ☐ **Regular Agenda Item** ☒

CONSIDERATION of Approval of a CPA with Zoll Medical in the amount of $94,449.06 for replacement defibrillators. Defibrillators are budgeted for in the Facilities Replacement Fund.

Vendor/Consultant/Agreement/Agency Information:

Contact Name:	Berry Herbert, Territory Manager
Entity Name:	Zoll Medical Corporation
Entity Address:	269 Mill Rd., Chelmsford, MA 01824-4105
Entity Phone, Fax and E-mail address:	800 348-9011, esales@zoll.com
Town of Fountain Hills Business License Number:	Applied For
Arizona Corporation Commission File Number:	F16333374

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 _____
- ☐ Other _____

Required Contract/Agreement Information:

Method of Vendor Selection:https://www.tucsonprocurement.com/coop_partners.aspx

Term of Contract/Agreement:One time purchase that includes three years of preventive maintenance

Contract Amount (this contract):$94,449.06 Cumulative Contract Amount:_____

Brief description of services/goods being sought: Three X Series defibrillators, associated equipment and preventive maintenance

Contract # assigned: C2019-068

Funding Source: Facilities Replacement Fund Project No. _____

Budget Transfer Required: _____; 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

Finance **requires** a "contract cover sheet" prior to processing the approved/signed contract/agreement for payment(s).

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL
AGENDA ACTION FORM

Meeting Date: 4/2/2019

Meeting Type: Regular Session

Agenda Type: Regular

Submitting Department: Administration

Staff Contact Information: Grady E. Miller, Town Manager

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF the removal of a stipulation relating to the abandonment of a utility and drainage easement previously approved by the Town Council on February 19, 2019.

Applicant: Rebecca Stasi

Applicant Contact Information: 16217 E. Keymar Drive; Fountain Hills, AZ 85268

Owner: Same

Owner Contact Information: N/A

Property Location: Same

Related Ordinance, Policy or Guiding Principle: N/A

Staff Summary (background): On February 19, 2019, the Town Council approved the abandonment of a 10 foot public utility and drainage easement at the rear of Plat 212, Block 11, Lot 5 (16217 E. Keymar Drive) requested by Mr. and Mrs. Stasi, the residents who own the property. The agenda item was placed on the consent agenda and approved with a stipulation that the property owners grant a 10' x 10' public utility easement (front yard) at the westerly front corner of the lot, for existing and potential future utility boxes.

Ms. Stasi contacted the Mayor and staff to understand why the Town required the property owners to grant a public utility easement in their front yard in exchange for the Town granting the public utility and drainage easement to the rear of the yard. In discussing this matter with the Town Engineer, it became clear that the town has requested similar easements in the past from other applicants who had requested abandonment of public utility and drainage easements. However, in looking at the specific situation, it is not clear why the Town was seeking the property owners to grant the easement in the front yard for this particular case. The applicants pointed out that they would have attended the Council meeting to request the removal of the stipulation had they known that it was on the agenda for February 19, 2019.

Based on a review of the matter, I am requesting that the Town Council remove the stipulation requiring the property owners to grant the public utility easement in the front yard.

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

Staff Recommendation(s): That the Town Council remove the stipulation requiring a 10' x 10' public utility easement in the front yard.

List Attachment(s): None

SUGGESTED MOTION (for Council use): MOVE to remove a stipulation previously approved by the Town Council requiring the property owners at 16217 E. Keymar Drive to dedicate a 10' x 10' public utility easement at the westerly front corner of their lot.

Prepared by:

NA Date

Director's Approval:

NA Date

Approved:

Grady E. Miller, Town Manager 3/12/2019

TOWN OF FOUNTAIN HILLS

16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268
480.816.5100 | Fax: 480.837.3145

Wednesday, February 6, 2019

Dear Mr. & Mrs. Stasi:

As the property owner of 16217 E Keymar Drive (Plat 212, Block 11, Lot 5), you have applied for an easement abandonment (EA2019-01) with the Town of Fountain Hills.

One requirement is to grant a 10' x 10' Public Utility Easement. This easement is located at the northwesterly corner of Plat 212, Block 11, Lot 5.(See Exhibit "A")

The Grant of Easement documents have been prepared for your signature and notarization. The Town can notarize these documents at no cost to you. If you would like to take advantage of this service, please call and make arrangements to meet with our notary, Paula Woodward. You can reach her at 480-816-5122 or by email at pwoodward@fh.az.gov.

If you have any questions regarding this Grant of Easement, please contact me at 480-816-5112 or email me at rharrel@fh.az.gov.

Yours very truly,

Randy L. Harrel, P.E., L.S.
Town Engineer

cc: Paula Woodward (EAA2019-01File)

Attachments: Grant of Easement document and Exhibit "A"

When Recorded Return To:
Development Services Department
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

GRANT OF EASEMENT

Rebecca and Mark Stasi, grantor, for good and valuable consideration, hereby grants to the Town of Fountain Hills, Arizona, grantee, a municipal corporation, it's successors and assigns and to the public utilities, a perpetual easement for the following purposes, namely:

> A 10' x 10' Public Utility Easement at the northwesterly corner of Plat 212, Block 11, Lot 5, (16217 E. Keymar Drive) Fountain Hills, Arizona, Book 141 of Maps, Page 17 MCR.

on, over, under and across the ground embraced within the aforementioned lot as depicted in Exhibit "A", situated in the Town of Fountain Hills, State of Arizona.

Grantor covenants that grantor is lawfully seized and possessed of this aforementioned tract or parcel of land; that grantor has good and lawful right to sell and convey it; and that grantor will warrant the title and quiet possession thereto against the claim of any person whatsoever.

Dated this ___ day of ____________2019.

By: ______________________________
Rebecca Stasi

____
Mark Stasi

STATE OF ARIZONA)
) §
County of Maricopa)

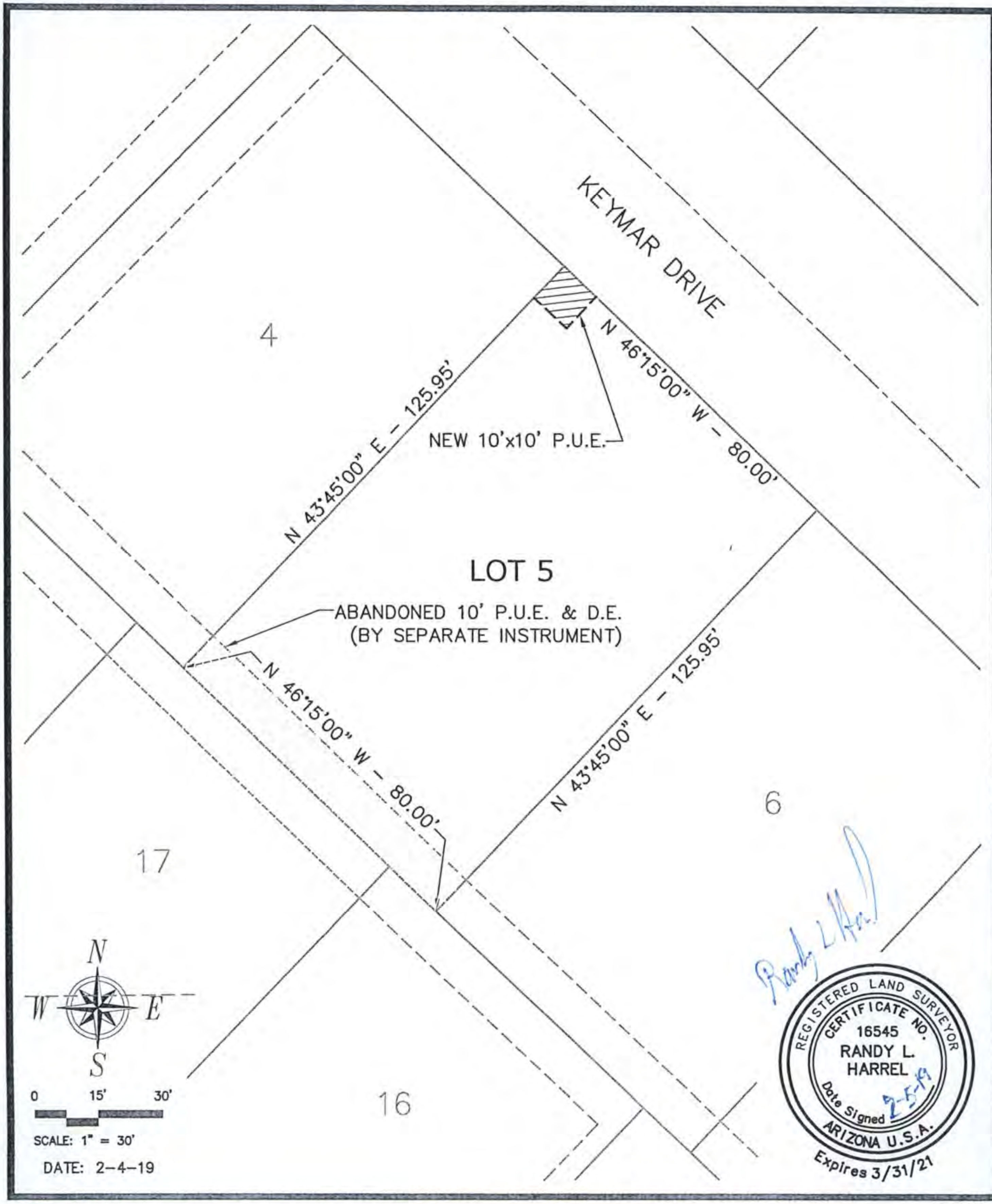
SUBSCRIBED AND SWORN TO, before me, this ____ day of____________, 2019,

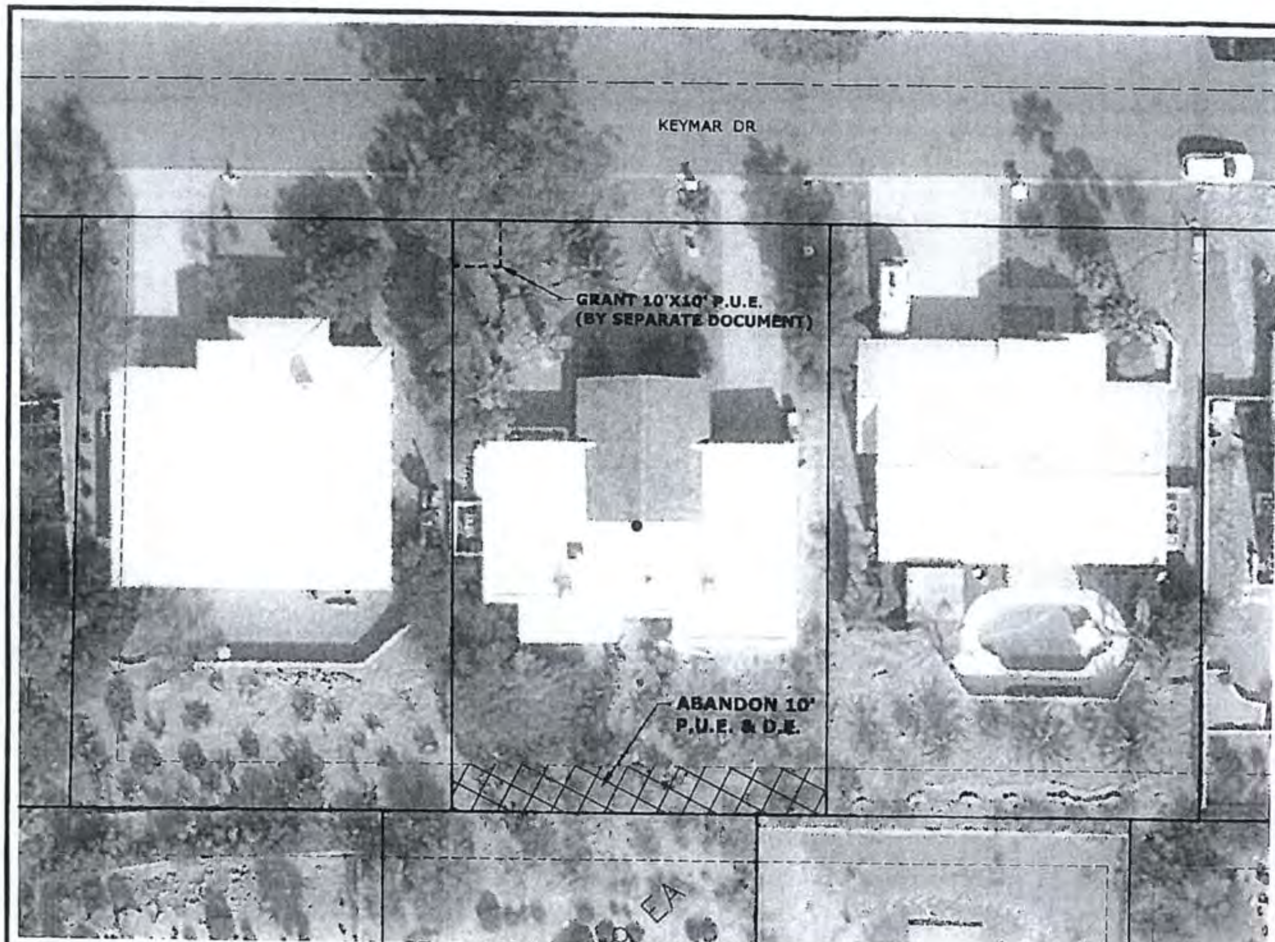
by ________________________________.

____
Notary Public

TOWN OF FOUNTAIN HILLS
EASEMENT ACQUISITION
EXHIBIT "A"

FOUNTAIN HILLS AZ, FINAL PLAT NO. 212, BLOCK 11, LOT 5





DEVELOPMENT SERVICES

2017 AERIAL

PLAT 212
BLOCK 11, LOT 5
16217 E KEYMAR DR

ZONING: R1-10

LOTLINE
RIGHT OF WAY
CENTERLINE
EASEMENT
ABAND. EASEMENT

SUBJECT HOUSE

N E S W

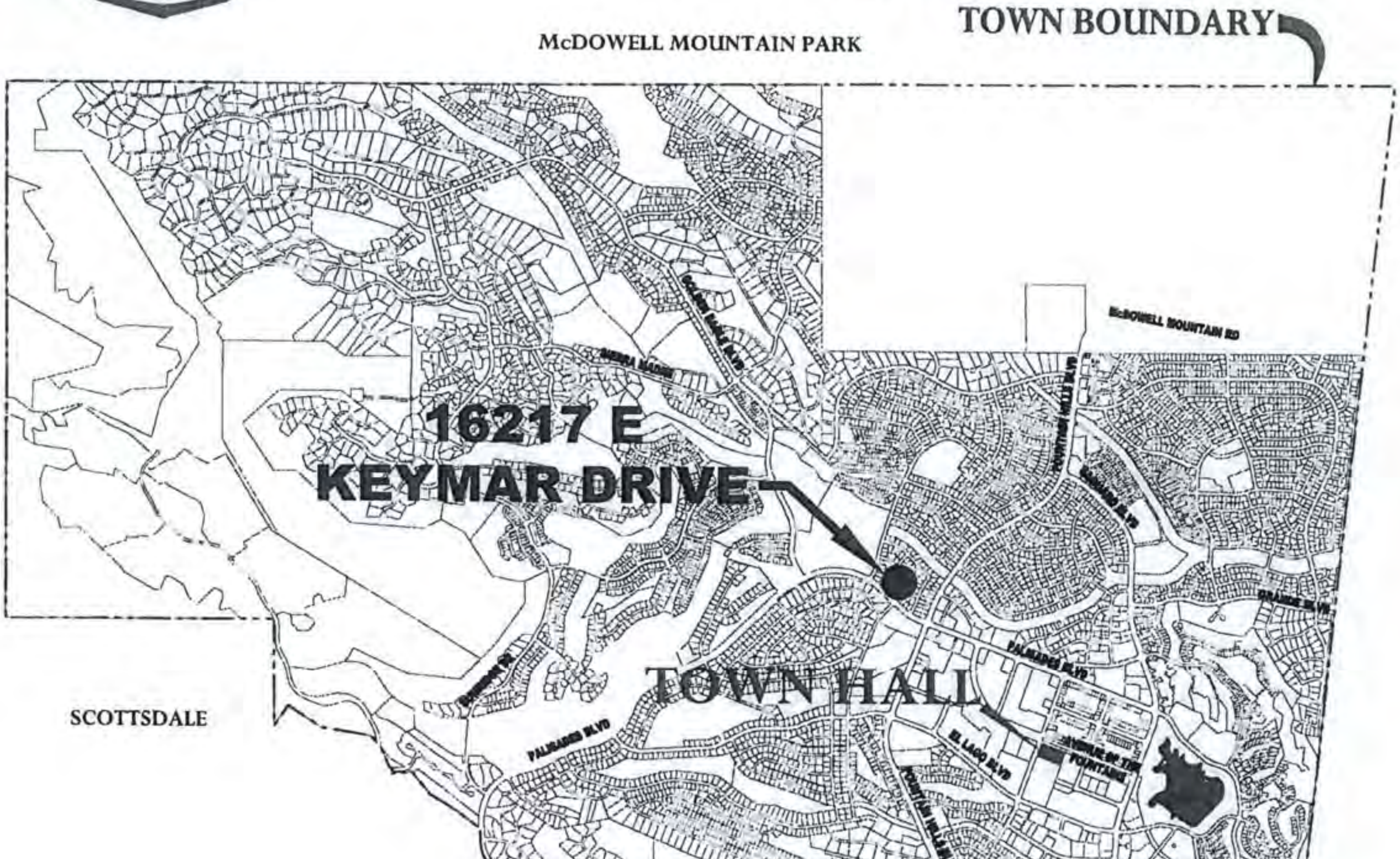
0 10' 20'
SCALE: 1" = 20'

- AERIAL PHOTO FLIGHT: 11/17
- TOPOGRAPICAL MAP: 9/91
- FEMA FLOOD DELINIATION: 10/13

THIS TOPO/AERIAL MAPPING IS SUITABLE FOR GENERAL PLANNING PURPOSES, BUT SHOULD NOT BE USED FOR DESIGN.

TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT

VICINITY MAP



ITEM 7-C

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019
Agenda Type: Regular

Meeting Type: Regular Session
Submitting Department: Public Works

Staff Contact Information: jweldy@fh.az.gov

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION OF approving the purchase a 2019 Caterpillar 420F2 Backhoe in the amount of $130,595.17 to replace the current Backhoe.

Applicant: NA

Applicant Contact Information: NA

Owner: Street Department

Owner Contact Information: NA

Property Location: NA

Related Ordinance, Policy or Guiding Principle: Vehicle Replacement Policy.

Staff Summary (background)**:** The Town currently has a backhoe that is twenty years old. The backhoe is utilized for a variety of important maintenance activities for the Town. This purchase is in compliance with the Vehicle Replacement Policy.

The purpose of the Vehicle Replacement Program Policy adopted by Town Council is to provide an authoritative decision-making process for the evaluation, selection, and multi-year scheduling of vehicle replacements based on a projection of available fiscal resources and the vehicle's age, mileage, engine hours and repair costs. The objectives of the program are to:

- Ensure the timely purchase, repair and replacement of the Town's vehicles;
- Serve as a link in the Town's planning between the Town's operating and capital budgets;
- Maintain control over the Town's long-term cash flow in relation to the Town's financial capacity; and
- Ensure efficient, effective and coordinated vehicle acquisition and replacement.

Per the Vehicle Replacement Program Policy, the guidelines below shall be utilized. Vehicles may also be replaced due to excessive maintenance and repair costs.

Tractor/Loaders: 20 years

Vehicles being replaced will be sent to auction with the proceeds being deposited into the Vehicle Replacement Fund.

Risk Analysis (options or alternatives with implications)**:** Without this Heavy equipment there would be delays for storm debris removal.

Fiscal Impact (initial and ongoing costs; budget status)**:** $130,595.17

Budget Reference (page number): 408

Funding Source: Vehicle Replacement Fund #810

If Multiple Funds utilized, list here: NA

Budgeted; if No, attach Budget Adjustment Form: Yes

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

Staff Recommendation(s): approval to purchase a 2019 Caterpillar 420F2 Backhoe utilizing the vehicle replacement fund.

List Attachment(s): Cooperative Purchasing Agreement, Underlying Master Agreement, Contractor Proposal and Budget Transfer Documents

---

SUGGESTED MOTION (for Council use): to approve the purchase of a 2019 Caterpillar 420F2 Backhoe in the amount of $130,595.17 and a budget transfer for the same amount.

Prepared by:

Jeff Pierce, Streets Superintendent 2/21/2019

Director's Approval:

Justin Weldy, Public Works Director 2/21/2019

Approved:

Grady E. Miller, Town Manager 3/20/2019

Contract No. C2019-073

COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
EMPIRE SOUTHWEST, LLC

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of April 2, 2019, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Empire Southwest, LLC, a Delaware limited liability company (the "Contractor").

RECITALS

A. After a competitive procurement process, the National Joint Powers Alliance ("NJPA") entered into Contract No. 032515, dated May 19, 2015, with Caterpillar, Inc., a Delaware corporation ("Caterpillar"), for the procurement of heavy construction equipment with related accessories, attachments, and supplies ("NJPA Contract"). A copy of the NJPA Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement. Contractor is an authorized dealer forCaterpillar.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the NJPA Contract, at its discretion and with the agreement of the awarded Contractor, and the NJPA Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging the cooperative contractual relationship under the NJPA Contract and this Agreement, (ii) establishing the terms and conditions by which the Town will purchase a 2019 CAT 420F2 Backhoe and any related accessories, attachments, or supplies (the "Backhoe"), and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Backhoe.

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. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until April 2, 2020 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the NJPA Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if: (i) it is deemed in the best interests of the Town, subject to availability and

appropriation of funds for renewal in each subsequent year, (ii) the term of the NJPA Contract has not expired or has been extended, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the Town approves the additional one-year term in writing (including any price adjustments approved as part of the NJPA Contract), as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall provide the Town with the Backhoe under the terms and conditions of the NJPA Contract and as more particularly set forth in the Contractor Proposal attached hereto as Exhibit B and incorporated herein by reference.

2.1 Inspection; Acceptance. The Backhoe is subject to final inspection and acceptance by the Town. If the Backhoe fails to conform to the requirements of this Agreement and/or the NJPA Contract, it will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of a non-conforming product, the Town may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; or (ii) stop the work immediately.

3. Compensation. The Town shall pay Contractor an aggregate amount not to exceed \$130,595.17 for the Backhoe at the rates set forth in the NJPA Contract and as more particularly set forth in the Contractor Proposal.

4. Payments. The Town shall pay the Contractor upon delivery and acceptance of the Backhoe, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the NJPA Contract and (ii) document and itemize all products delivered to date. The invoice statement shall include sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the NJPA Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any 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 evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, 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 Section. 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 Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. 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 subcontractors' 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.

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 Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona, and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

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

11. Conflicting Terms. In the event of any inconsistency, conflict, or ambiguity among the terms of this Agreement, the Contractor Proposal, the NJPA Contract, and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in

conformity with Section 2 above, unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement or the NJPA Contract (collectively, the "Unauthorized Conditions"), other than the Town's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the NJPA Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed as or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Rights and Privileges. To the extent provided under the NJPA Contract, the Town shall be afforded all of the rights and privileges afforded to NJPA and shall be "NJPA" (as defined in the NJPA Contract) for the purposes of the portions of the NJPA Contract that are incorporated herein by reference.

13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to NJPA to the extent provided under the NJPA Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend, and hold harmless the Town and each council member, officer, employee, and 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 such Claims (or actions in respect thereof) are caused by the negligent acts or intentional misconduct of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (iii) 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 E. Falcon Drive, Suite 111 Mesa, Arizona 85215 Attn: Aaron D. Arnson, Town Attorney

If to Contractor: Empire Southwest, LLC
1725 S. Country Club Drive
Mesa, AZ 85210
Attn: Doug Calvet

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: (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (iii) 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.

[SIGNATURES APPEAR 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
3/20/19

____
Grady E. Miller, Town Manager

ATTEST:

____
Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

____
Aaron D. Arnson, Town Attorney

(ACKNOWLEDGEMENT)

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"

EMPIRE SOUTHWEST, LLC,
a(n) Delaware limited liability company

By: ______________________

Name: John Helms

Its: Vice President/CFO

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

On March 19, 2019, before me personally appeared John Helms, the VP/CFO of EMPIRE SOUTHWEST, LLC, a Delaware limited liability company, 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 limited liability company.

JOYCE POLLARD
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
July 02, 2021

Joyce Pollard
Notary Public

(Affix notary seal here)

4840-8744-4858, v. 1

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
EMPIRE SOUTHWEST, LLC
D/B/A EMPIRE POWER SYSTEMS

[NJPA Contract]

See following pages.

National Joint Powers Alliance® (herein NJPA)

REQUEST FOR PROPOSAL (herein RFP)

for the procurement of

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

RFP Opening

MARCH 26, 2015
8:00 a.m. Central Time
At the offices of the
National Joint Powers Alliance®
202 12th Street Northeast, Staples, MN 56479

RFP #032515

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential member agencies, which includes all governmental, higher education, K-12 education, not-for-profit, tribal government, and all other public agencies located in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of # 032515 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES. Details of this RFP are available beginning JANUARY 23, 2015. Details may be obtained by letter of request to Jonathan Yahn, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpacoop.org. Proposals will be received until MARCH 25, 2015 at 4:30 p.m. Central Time at the above address and opened MARCH 26, 2015 at 8:00 a.m. Central Time.

RFP Timeline

JANUARY 23, 2015	**Publication of RFP in the print and online version of the Minneapolis *Star Tribune*, in the print and online version of the *USA Today*, in the print and online version of the *Salt Lake News* within the State of Utah, in the print and online version of the *Daily Journal of Commerce* within the State of Oregon (note: OR entities this pertains to: http://www.njpacoop.org/oregon-advertising), in the print and online version of *The State* within the State of South Carolina, the NJPA website, MERX, Noticetobidders.com, PublicPurchase.com, Biddingo, and Onvia.**
MARCH 4, 2015 **10:00 a.m. Central Time**	**Pre-Proposal Conference (the webcast/conference call. The connection information will be sent to all inquirers two business days before the conference).**
MARCH 18, 2015	**Deadline for RFP questions.**
MARCH 25, 2015 **4:30 p.m. Central Time**	**Deadline for Submission of Proposals. Late responses will be returned unopened.**
MARCH 26, 2015 **8:00 a.m. Central Time**	**Public Opening of Proposals.**

Direct questions regarding this RFP to: Jonathan Yahn at jonathan.yahn@njpacoop.org or (218)895-4144.

TABLE OF CONTENTS

1 DEFINITIONS

A. CONTRACT

"Contract" as used herein shall consist of: this RFP, pricing, fully executed forms C, D, F & P from the Proposer's response pursuant to this RFP, and a fully executed form E ("Acceptance and Award") with final terms and conditions. Form E will be executed on or after award and will provide final clarification of terms and conditions of the award.

B. CURRENCY

All transactions are payable in U.S. dollars on U.S. sales. All administrative fees are to be paid in U.S. dollars.

C. EXCLUSIVE VENDOR

A sole Vendor awarded in a product category. NJPA reserves the right to award to an Exclusive Vendor in the event that such an award is in the best interests of NJPA Members nationally. A Proposer that exhibits and demonstrates the ability to offer and execute an outstanding overall program, demonstrates the ability and willingness to serve NJPA current and qualifying Members in all 50 states and comply with all other requirements of this RFP, is preferred.

D. FOB

FOB stands for "Freight On Board" and defines the point at which responsibility for loss and damage of product/equipment purchased is transferred from Seller to Buyer. "FOB Destination" defines that transfer of responsibility for loss is transferred from Seller to Buyer at the Buyer's designated delivery point. FOB does not identify who is responsible for the costs of shipping. The responsibility for the costs of shipping is addressed elsewhere in this document.

E. HUB PARTNER

An organization that a member requests to be served through with an Awarded Vendor for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction.

F. PROPOSER

A company, person, or entity delivering a timely response to this RFP.

G. REQUEST FOR PROPOSAL

Herein referred to as RFP.

H. SOURCED GOODS

A Sourced Good or Open Market Item is a product within the RFP's scope - generally deemed incidental to the total transaction or purchase of contract items - which a member wants to buy under contract from an Awarded Vendor that is not currently available under the Vendor's NJPA contract.

I. TIME

Periods of time, stated as number of days, shall be in calendar days.

J. TOTAL COST OF ACQUISITION

The Total Cost of Acquisition for the equipment/products and related services being proposed is the cost of the proposed equipment/products and related services delivered and operational for its intended purpose in the end-user's location.

K. VENDOR

A Proposer whose response has been awarded a contract pursuant to this RFP.

2 ADVERTISEMENT OF RFP

2.1 NJPA shall advertise this solicitation: 1) for two consecutive weeks in both the hard copy print and on-line editions of the MINNEAPOLIS STAR TRIBUNE; 2) once each in Oregon's Daily Journal of Commerce, South Carolina's The State and Utah's Salt Lake Tribune; 3) on NJPA's website; 4) in the hard copy print and online editions of the USA Today; and 5) on other third-party websites deemed appropriate by NJPA. Other third party advertisers may include Onvia, PublicPurchase.com, MERX and Biddingo.

2.2 NJPA also notifies and provides solicitation documentation to each State level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

3 INTRODUCTION

A. ABOUT NJPA

3.1 The National Joint Powers Alliance® (NJPA) is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.

3.2 Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at www.njpacoop.org.

3.3 NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors calls for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.

> **3.3.1** **Subject to Approval of the NJPA Board**: NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal Evaluation Committee.

3.4 NJPA currently serves over 50,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

B. JOINT EXERCISE OF POWERS LAWS

3.5 NJPA cooperatively shares those contracts with its Members nationwide through various Joint Exercise of Powers Laws or Cooperative Purchasing Statutes established in Minnesota, other States and Canadian Provinces. The Minnesota Joint Exercise of Powers Law is Minnesota Statute §471.59 which states "Two or more governmental units…may jointly or cooperatively exercise any power common to the contracting parties…" This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at http://www.njpacoop.org/national-cooperative-contract-solutions/legal-authority/.

C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

3.6 National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:

3.6.1 National cooperative contracts potentially save the time and effort of Municipal and Public Agencies who would have been otherwise charged with soliciting vendor responses to individual RFP's, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond to each of those individual RFPs. A single, nationally advertised RFP, resulting in a single, national cooperative contract can potentially replace thousands of individual RFPs for the same equipment/products/services that might have been otherwise advertised by individual NJPA member agencies.

3.6.2 NJPA contracts offer our Members nationally leveraged volume purchasing discounts. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.

3.7 State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.

3.8 The collective purchasing power of thousands of NJPA Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by an NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

3.9 NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Vendors have the opportunity to display and highlight value added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

D. THE INTENT OF THIS RFP

3.10. **National contract awarded by the NJPA Board of Directors:** NJPA seeks the most responsive and responsible Vendor relationship(s) to reflect the best interests of NJPA and its Member agencies. Through a competitive proposal and evaluation process, the NJPA Proposal Evaluation Committee reviews and recommends vendors for to award a national contract by the action of the NJPA Board of Directors. NJPA's primary intent is to establish and provide a national cooperative procurement contract which offer opportunities for NJPA and our Member agencies to procure quality product/equipment and services as desired and needed. The contracts will be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA. Contracts are expected to offer price levels reflective of the potential and collective volume of NJPA and the nationally established NJPA membership base.

3.11 Beyond our primary intent, NJPA further desires to:

3.11.1 Award a four year term contract with a fifth year contract option resulting from this RFP;

3.11.2 Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP

3.11.3 Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's Response";

3.11.4 Deliver wide spectrums of solutions to meet the needs and requirement of NJPA and NJPA Member agencies.

3.11.5 Award an exclusive contract to the most responsive and responsible vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies

3.12 Exclusive or Multiple Awards: Based on the goals and scope of this RFP, NJPA is requesting responders to demonstrate their ability to serve the needs of NJPA's national membership. It is NJPA's intent and desire to award a contract to a single exclusive Vendor to serve our membership's needs. To meet the goals of this RFP, NJPA reserves the right to award a Contract to multiple Proposers where the result justifies a multiple award and multiple contracts are deemed to be in the best interests of NJPA Member agencies.

3.13 Non-Manufacturer Awards: NJPA reserves the right to make an award related to this invitation to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

3.14 Manufacturer as a Proposer: If the Proposer is a Manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that Manufacturer's authorized Dealer Network. Unless stated otherwise, a Manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their Dealer Network where that Dealer Network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the Manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the Manufacturer and wholesale distributor Proposer and its Dealer Network may be proposed at the time of the proposed submission if that fact is properly identified.

3.15 Dealer/Re-seller as a Proposer: If the Proposer is a dealer or re-seller of the products and/or services being proposed, the response will be evaluated based on the Proposer's authorization to provide those products and services from their manufacturer. Where appropriate, Proposers must document their authority to offer those products and/or services.

E. SCOPE OF THIS RFP

3.16 Scope: The scope of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive and responsible through our open and competitive proposal process. Vendors will be awarded contracts based on the proposal and responders demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of NJPA and its Member agencies nationally within the scope of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES .

3.17 Additional Scope Definitions: For purposes of the scope of this solicitation:

3.17.1 In addition to HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES, **this solicitation should be read to include, but not to be limited to:**

3.17.1.1 Wheel or track loaders, motor graders, excavators, bull dozers, compactors, scrapers, vocational trucks, articulated trucks, cranes, paving machines, screeds, pavement milling machines, and rollers.

3.17.2 NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

3.17.2.1 Respondents must meet at least ONE of the following three requirements (A through C) to be considered within the scope of this solicitation.

A) The response must include at least one of EACH of the following: a wheeled or track loader with published net horsepower in excess of 300 H.P., an excavator with published operating weight in excess of 60,000 lbs., or a motor grader with published operating weight in excess of 35,000 lbs.

B) The response must include at least one crane with a published maximum lifting capacity exceeding 300 tons and a published maximum boom length exceeding 150 feet.

C) The response must include at least one of EACH of the following: a paver, a pavement milling machine, or a screed.

For purposes of this Section 3.17.2.1, the term "published" means that the information is readily available through the respondent's printed literature or website and that the respondent has verified the accuracy the information.

3.18 Overlap of Scope: When considering equipment/products/services, or groups of equipment/products/services submitted as a part of your response, and whether inclusion of such will fall within a "Scope of Proposal," please consider the validity of an inverse statement.

3.18.1 For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.

3.18.2 In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.

3.18.3 In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original "Scope" as intended by NJPA.

3.19 Best and Most Responsive – Responsible Proposer: It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer's Response has been submitted in accordance with the requirements of this RFP. Qualifying Proposers who are able to anticipate the current and future needs and requirements of NJPA and NJPA member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service NJPA Members in all 50 states are preferred. NJPA requests proposers submit their entire product line as it applies and relates to the scope of this RFP.

3.20 Sealed Proposals: NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

3.21 Use of Contract: Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to obtain like equipment/products and services solely from this contract or from another contract source of their choice or from a contract resulting from their own procurement process.

3.22 Awarded Vendor's interest in a contract resulting from this RFP: Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those products/equipment and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as "contract compliant," products/equipment and services which are not specifically identified and priced in their NJPA Awarded Contract.

3.23 Sole Source of Responsibility- NJPA desires a "Sole Source of Responsibility" Vendor. This means the Vendor will take sole responsibility for the performance of delivered equipment/products/ services. NJPA also desires sole responsibility with regard to:

3.23.1 Scope of Equipment/Products/Services: NJPA desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of NJPA current and potential Members.

3.23.2 Vendor use of sub-contractors in sourcing or delivering equipment/product/services: NJPA desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the equipment/products/services being proposed. Vendor assumes all responsibility for the equipment/products/services and actions of any such Sub-Contractor. Suggested Solutions Options include:

3.24.1 Multiple solutions to the needs of NJPA and NJPA Members are possible. Examples could include:

3.24.1.1 Equipment/Products Only Solution: Equipment/Products Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.

3.24.1.2 Turn-Key Solutions: A Turn-Key Solution is a combination of equipment/products and services which provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution as NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors

3.24.1.3 Good, Better, Best: Where appropriate and properly identified, Proposers are invited to offer the CHOICE of good – better – best multiple grade solutions to NJPA and NJPA Members' needs.

3.24.1.4 Proven – Accepted – Leading Edge Technology: Where appropriate and properly identified, Proposers are invited to provide an appropriate identified spectrum of technology solutions to compliment or enhance the functionality of the proposed solutions to NJPA and NJPA Members' needs both now and into the future.

3.24.2 If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

3.25 Geographic Area to be Proposed: This RFP invites proposals to provide HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.

3.26 Contract Term: At NJPA's option a contract resulting from this RFP will become effective either the date awarded by the NJPA Board of Directors or the day following the expiration date of an existing NJPA procurement contract for the same or similar product/equipment and services.

3.26.1 NJPA is seeking a Contract base term of four years as allowed by Minnesota Contracting Law. Full term is expected. However, one additional one-year renewal/extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members. NJPA reserves the right to conduct periodic business reviews throughout the term of the contract.

3.27 Minimum Contract Value: NJPA anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members and the value of the awarded contract.

3.28 Estimated Contract Volume: Estimated quantities and sales volume are based on potential usage by NJPA and NJPA Member agencies nationally.

3.29 Contract Availability: This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

3.30 Proposer's Commitment Period: In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals were opened regarding this RFP.

F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED

3.31 Industry Standards: Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated needs and requirements of NJPA and its Members.

3.31.1 Deviations from industry standards must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

3.31.2 Technical Descriptions/Specifications. Excessive technical descriptions and specifications which, in the opinion of NJPA unduly enlarge the proposal response may reduce evaluation points awarded on Form G. Proposers must supply sufficient information to:

3.31.2.1 demonstrate the Proposer's knowledge of industry standards;

3.31.2.2 identify the equipment/products and services being proposed; and

3.31.2.3 differentiate equipment/products and services from others.

3.32 New Current Model Equipment/Products: Proposals submitted shall be for new, current model equipment/products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.

3.33 Compliance with laws and standards: All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

3.34 Delivered and operational: Products/equipment offered herein are to be proposed based upon being delivered and operational at the NJPA Member's site. Exceptions to "delivered and operational" must be explicitly disclosed in the "Total Cost of Acquisition" section of your proposal response.

3.35 Warranty: The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty which is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in non-award.

3.36 Additional Warrants: The Proposer warrants all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the ordinary use for which they are intended.

G. SOLUTIONS BASED SOLICITATION

3.37 NJPA solicitations and contract process will not offer specific specifications for proposers to meet or base your response on. This RFP is a "Solutions Based Solicitation." This means the proposers are asked to understand and anticipate the current and future needs of NJPA and the nationally located NJPA membership base, within the scope of this RFP, and including specifications commonly desired or required by law or industry standards. Your proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of NJPA and our member agencies within the defined scope of this RFP.

3.38 NJPA does not typically provide product and service specifications; rather NJPA is requesting an industry standard or accepted specification for the requested product/equipment and services. Where specific line items are specified, those line items should be considered the minimum which can be expanded by the Proposer to deliver the Proposer's "Solution" to NJPA and NJPA Members' needs.

4 INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

A. INQUIRY PERIOD

4.1 The inquiry period shall begin at the date of first advertisement and continue to the "Deadline for Requests." RFP packages shall be distributed to Potential Bidders during the inquiry period. The purpose for the defined "Inquiry Period" is to ensure proposers have enough time to complete and deliver the proposal to our office.

B. PRE-PROPOSAL CONFERENCE

4.2 A non-mandatory pre-proposal conference will be held at the date and time specified in the time line on page one of this RFP. Conference call and web connection information will be sent to all Potential Proposers through the same means employed in their inquiry. The purpose of this conference call is to allow Potential Proposers to ask questions regarding this RFP and hear answers to their own questions and the questions of other Potential Proposers. Only answers issued in writing by NJPA to questions asked before or during the Pre-proposal Conference shall be considered binding.

C. IDENTIFICATION OF KEY PERSONNEL

4.3 Vendor will designate one senior staff individual who will represent the awarded Vendor to NJPA. This contact person will correspond with members for technical assistance, questions or problems that may arise including instructions regarding different contacts for different geographical areas as needed.

4.4 Individuals should also be identified (if applicable) as the primary contacts for the contents of this proposal, marketing, sales, and any other area deemed essential by the Proposer.

D. PROPOSER'S EXCEPTIONS TO TERMS AND CONDITIONS

4.5 Any exceptions, deviations, or contingencies a Proposer may have to the terms and conditions contained herein must be documented on Form C.

4.6 Exceptions, deviations or contingencies stipulated in Proposer's Response, while possibly necessary in the view of the Proposer, may result in disqualification of a Proposal Response.

E. PROPOSAL FORMAT

4.7 It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after the deadline for submission of proposals.

4.8 All proposals must be properly labeled and sent to "The National Joint Powers Alliance®, 202 12th ST NE Staples, MN 56479."

4.9 Format for proposal response: All proposals must be physically delivered to NJPA at the above address in the following form and with all required hard copy documents and signature forms/pages inserted as loose pages at the front of the Vendor's response:

4.9.1 Hard copy original signed, completed, and dated forms C, D, F and hard copy signed signature page only from forms A and P from this RFP;

4.9.2 Hard copies of all addenda issued for the RFP with original counter signed by the Proposer;

4.9.3 Hardy copy of Certificate of Insurance verifying the coverage identified in this RFP; and

4.9.4 A complete copy of your response on a CD (Compact Disc) or flash drive. The copy shall contain completed Forms A, B, C, D, F & P, your statement of products and pricing (including apparent discount) together with all appropriate attachments. Everything you send with your hard copy should also be included in the electronic copy. As a public agency, NJPA proposals, responses and awarded contracts are a matter of public record, except for that data included in the proposals, responses and awarded contracts that is classified as nonpublic; thus, pursuant to statute, NJPA policies and RFP terms and conditions, all documentation, except for that data which is nonpublic is available for review by the public through a public records request. If you wish to request that certain information that falls within Minnesota Statute §13.37 be redacted, such request must be made within thirty-days of award/non-award.

4.10 All Proposal forms must be submitted in English and be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

4.11 Proposal submissions should be submitted using the electronic forms provided. If a Proposer chooses to use alternative documents for their response, the Proposer will be responsible for ensuring the content is effectively equal to the NJPA form and the document is in a format readable by NJPA.

4.12 It is the responsibility of the Proposer to be certain the proposal submittal is in the physical possession of NJPA on or prior to the deadline for submission of proposals.

4.12.1 Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message **"Hold for Proposal Opening",** and the deadline for proposal submission. NJPA cannot be responsible for late receipt of proposals. Proposals received by the correct deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

4.13 Corrections, erasures, and interlineations on a Proposer's Response must be initialed by the authorized signer in original ink on all copies to be considered.

4.14 Addendums to the RFP: The Proposer is responsible for ensuring receipt of all addendums to this RFP.

4.14.1 Proposer's are responsible for checking directly with the NJPA website for addendums to this RFP.

4.14.2 Addendums to this RFP can change terms and conditions of the RFP including the deadline for submission of proposals.

F. QUESTIONS AND ANSWERS ABOUT THIS RFP

4.15 Upon examination of this RFP document, Proposer shall promptly notify NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections and changes to this RFP will be made by NJPA through addendum. Interpretations, corrections, or changes made in any other manner will not be binding and Proposer shall not rely upon such.

4.16 Submit all questions about this RFP, in writing, referencing HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES to Jonathan Yahn, NJPA 202 12th Street NE, Staples, MN 56479 or RFP@njpacoop.org. Those not having access to the Internet may call Jonathan Yahn at (218) 895-4144. Requests for additional information or interpretation of instructions to Proposers or technical specifications shall also be addressed to Jonathan Yahn. NJPA urges Potential Proposers to communicate all concerns well in advance of the deadline to avoid misunderstandings. Questions received less than seven (7) days ending at 4:00 p.m. Central Time of the seventh (7^{th}) calendar day prior to proposal due-date cannot be answered; however, communications permitted include: NJPA issued addenda or potential Vendor withdrawal of their response prior to RFP submission deadline.

4.17 If the answer to a question is deemed by NJPA to have a material impact on other potential proposers or the RFP itself, the answer to the question will become an addendum to this RFP.

4.18 If the answer to a question is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on other potential proposers or the RFP itself, no further documentation of that question is required.

4.19 As used in this solicitation, clarification means communication with a Potential Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the RFP.

4.20 Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA shall become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of said materials. Copies of addenda will also be made available on the NJPA website at www.njpacoop.org by clicking on "Current and Pending Solicitations" and from the NJPA offices. No questions will be accepted by NJPA later than seven (7) days prior to the deadline for receipt of proposals, except Each Potential Proposer shall ascertain prior to submitting a Proposal that it has received all addenda issued, and the Proposer shall acknowledge their receipt in its Proposal Response.

4.21 An amendment to a submitted proposal must be in writing and delivered to NJPA no later than the time specified for opening of all proposals.

G. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

4.22 A submitted proposal may not be modified, withdrawn or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened. Prior to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Contracts and Compliance Manager. Such notice shall be submitted in writing and include the signature of the Proposer and shall be delivered to NJPA prior to the deadline for submission of proposals and it shall be so worded as not to reveal the content of the original proposal. However, the original proposal shall not be physically returned to the Potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they are then fully in conformance with the Instructions to Proposer.

4.23 Examples of Value Added Attributes: Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be "Value Added Services" for products where a typical buyer may not have the ability to perform these functions. The opportunity to indicate value added dimensions and such advancements will be available in the Proposer's Questionnaire and Proposer's product and service submittal.

4.24 Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES and advances to provide equipment/products/services or supplies meeting and/or exceeding today's industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products/services and training. Value added could include areas of equipment, product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

4.25 Minority, Small Business, and Women Business Enterprise (WMBE) participation: It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase equipment/products and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide "Credits" to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. NJPA is committed to facilitating the realization of such "Credits" through certain structuring techniques for transactions resulting from this RFP.

4.26 Environmentally Preferred Purchasing Opportunities: There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. "Green" characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. Please identify any Green characteristics of the equipment/products and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as "green" and by which certifying agency.

4.27 On-Line Requisitioning systems: When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

4.28 Financing: The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

H. PROPOSAL OPENING PROCEDURE

4.29 Sealed and properly identified Proposer's Responses for this RFP entitled HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES will be received by Jonathan Yahn, Contracts and Compliance Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and proposal opening identified on page one of this RFP. **We document the receipt by using an atomic clock; an NJPA employee electronically time and date stamps all Proposals immediately upon receipt.** The NJPA Director of Contracts and Marketing, or Representative from the NJPA Proposal Evaluation Committee, will then read the Proposer's names aloud. A summary of the responses to this RFP will be made available for public inspection in the NJPA office in Staples, MN. A letter or e-mail request is required to receive a complete RFP package. Send or communicate all requests to the attention of Jonathan Yahn 202 12th Street Northeast Staples, MN 56479 or RFP@njpacoop.org to receive a complete copy of this RFP. Method of delivery needs to be indicated in the request; an email address is required for electronic transmission. Oral, facsimile, telephone or telegraphic Proposal Submissions or requests for this RFP are invalid and will not receive consideration. All Proposal Responses must be submitted in a sealed package. The outside of the package shall plainly identify HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES. To avoid premature opening, it is the responsibility of the Proposer to label the Proposal Response properly.

I. NJPA'S RIGHTS RESERVED

4.30.1 Reject any and all Proposals received in response to this RFP;

4.30.2 Disqualify any Proposer whose conduct or Proposal fails to conform to the requirements of this RFP;

4.30.3 Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;

4.30.4 Consider a late modification of a Proposal if the Proposal itself was submitted on time and if the modifications were requested by NJPA and the modifications make the terms of the Proposal more favorable to NJPA, and accept such Proposal as modified;

4.30.5 At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;

4.30.6 Extend the Contract, in increments determined by NJPA, not to exceed a total contract term of five years; and

4.30.7 Cancel the Request for Proposal at any time and for any reason with no cost or penalty to NJPA.

4.30.8 Correct or amend the RFP at any time with no cost or penalty to NJPA. If NJPA should correct or amend any segment of the RFP after submission of Proposals and prior to announcement of the Awarded Vendor, all Proposers will be afforded ample opportunity to revise their Proposal to accommodate the RFP amendment and the dates for submission of revised Proposals announced at that time. NJPA will not be liable for any errors in the RFP or other responses related to the RFP.

4.30.9 Extend proposal due dates.

5 PRICING

5.1 NJPA requests Potential Proposers respond to this RFP only if they are able to offer a wide array of equipment/products and services and at prices lower and better value than what they would ordinarily offer to single government agency, larger school district, or regional cooperative.

5.2 RFP is an Indefinite Quantity Equipment/Products and Related Service Price and Program Request with potential national sales distribution and service. If Proposer's solution requires additional supporting documentation, describe where it can be found in your submission. If Proposer offers the solution in an alternative fashion, describe your solution to be easily understood. All pricing must be copied on a CD or thumb drive along with other requested information as a part of a Proposer's Response.

5.3 Regardless of the payment method selected by NJPA or NJPA Member, a total cost associated with any purchase option of the equipment/products and services and being supplied must always be disclosed at the time of purchase.

5.4 All Proposers will be required to submit "Primary Pricing" in the form of either "Line-Item Pricing," or "Percentage Discount from Catalog Pricing," or a combination of these pricing strategies. Proposers are also encouraged to offer OPTIONAL pricing strategies such as but not limited to "Hot List," "Sourced Product/Equipment" and "Volume Discounts," as well as financing options such as leasing. All pricing documents should include an effective date, preferably in the top right corner of the first page of each pricing document.

A. LINE-ITEM PRICING

5.5 A pricing format where specific individual products and/or services are offered at specific individual Contract prices. Products/equipment and/or related services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing offers the least amount of confusion as products/equipment and prices are individually identified however, Proposers with a large number of products/equipment to propose may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and increase the clarity of the contract pricing format.

5.6 All Line-Item Pricing items must be numbered, organized, sectioned, including SKU's (when applicable) and easily understood by the Evaluation Committee and members.

5.7 Submit Line-Item Pricing items in an Excel spreadsheet format and include all appropriate identification information necessary to discern the line item from other line items in each Responder's proposal.

5.8 The purpose for a searchable excel spreadsheet format for Line-Item Pricing is to be able to quickly find any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information which is typically found on an invoice or price quote for such products/equipment and related services.

5.9 All products/equipment and related services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

5.10 Proposers are asked to provide both a published "List" price as well as a "Proposed Contract Price" in their pricing matrix. Published List price will be the standard "quantity of one" price currently available to government and educational customers excluding cooperative and volume discounts.

B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

5.11 A specific percentage discount from a Catalog or List price" defined as a published Manufacturer's Suggested Retail Price (MSRP) for the products/equipment or related services being proposed.

5.12 Individualized percentage discounts can be applied to any number of defined product groupings.

5.13 A Percentage Discount from MSRP may be applied to all elements identified in MSRP including all Manufacturer Options applicable to the equipment/products or related services.

5.14 When a Proposer elects to use "Percentage Discount from Catalog or Category," Proposer will be responsible for providing and maintaining current published MSRP with NJPA and must be included in their proposal and provided throughout the term of any Contract resulting from this RFP.

C. COST PLUS A PERCENTAGE OF COST

5.15 Cost plus a percentage of cost as a primary pricing mechanism is not desirable.

D. HOT LIST PRICING

5.16 Where applicable, a Vendor may opt to offer a specific selection of products/services, defined as Hot List pricing at greater discounts or related advantages than those listed in the standard Contract pricing. All product/service pricing, including the Hot List Pricing, must be submitted electronically provided in Excel format. Hot List pricing must be submitted in a Line-Item format. Equipment/products and related services may be added or removed from the "Hot List" at any time through an NJPA Price and Product Change Form.

5.17 Hot List program and pricing when applicable may also be used to discount and liquidate close-out and discontinued equipment/products and related services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

E. CEILING PRICE

5.18 Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and related services be offered pursuant to this Contract at prices above this ceiling price without request and approval by NJPA. Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.

5.19 Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

F. VOLUME PRICE DISCOUNTS / ADDITIONAL QUANTITIES

5.20 Proposers are free to offer volume commitment discounts from the contract pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

5.21 Nothing in this Contract establishes a favored member relationship between the NJPA or any NJPA Member and the Vendor. The Vendor will, upon request by NJPA Member, extend this same reduced price offered or delivered to another NJPA Member provided the same or similar volume commitment, specific needs, terms, and conditions, a similar time frame, seasonal considerations, locations, competitively situations and provided the same manufacturer support is available to the Vendor.

5.22 All price adjustments are to be offered equally to all NJPA Members exhibiting the same or substantially similar characteristics such as purchase volume commitments, and timing including the availability of special pricing from the Vendor's suppliers.

5.23 The contract awarded vendor will accept orders for additional quantities at the same prices, terms and conditions, providing the NJPA Member exercises the option before a specific date, mutually agreed upon between member and contract awarded vendor at time of original purchase order. Any extension(s) of pricing beyond the specific date shall be upon mutual consent between the NJPA Member and the contract awarded vendor.

G. TOTAL COST OF ACQUISITION

5.24 The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by NJPA Members to either the Proposer or a third party is the cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user's location. For example, if you are proposing equipment/products FOB Proposer's dock., your proposal should identify your deviation from the "Total Cost of Acquisition" of contracted equipment/products. The Proposal should reflect that the "contract does not provide for delivery beyond Proposer's dock, nor any set-up activities or costs associated with those delivery or set-up activities." In contrast, proposed terms including all costs for product/equipment and services delivered and operational at to the end-user's location would require a disclosure of "None."

H. SOURCED PRODUCT/EQUIPMENT / OPEN MARKET ITEMS

5.25 A Sourced Good or an Open Market Item is a product that a member wants to buy under contract that is not currently available under the Vendor's NJPA contract. This method of procurement can be satisfied through a contract sourcing process. Sourcing options serve to provide a more complete contract solution to meet our members' needs. Sourced items are generally deemed incidental to the total transaction or purchase of contract items.

5.26 NJPA or NJPA Members may request product/equipment and/or related services that are within the related scope of this RFP, which are not included in an awarded Vendor's line-item product/equipment and related service list or catalog. These items are known as Sourced Product/Equipment or Open Market Items.

5.27 An awarded Vendor resulting from this RFP may "Source" equipment/products and related services for NJPA or an NJPA Member to the extent they:

5.27.1 Identify all such equipment, products and services as "Sourced Products/Equipment " or "Open Market Items" on any quotation issued in reference to an NJPA awarded contract, and provided to either NJPA or an NJPA Member; and

5.27.2 Follow all applicable acquisition regulations pertaining to the purchase of such equipment, products and services, as defined by NJPA or NJPA Member receiving quotation from Vendor; and

5.27.3 Ensure NJPA or the NJPA Member has determined the prices as quoted by the Vendor for such equipment, products and services are deemed to be fair and reasonable and are acceptable to the member/buyer; and

5.27.4 Identify all product/equipment sourced as a part of an NJPA contract purchase with all required NJPA reporting and fees applying.

5.28 Cost plus a percentage is an option in pricing of sourced goods.

I. PRODUCT & PRICE CHANGES

5.29 Requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing the NJPA Price and Product Change Request Form (located at the end of this RFP and on the NJPA website) and signature of an authorized Vendor employee. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager and PandP@njpacoop.org.

5.30 NJPA's due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the "Best Interests of NJPA and NJPA Members." A signed Price and Product Change form will be returned to vendor contact via email.

5.31 Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a compete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, "COMPANY 012411-CPY eff 02-12-2013."

5.32 New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

5.33 ADDITIONS. New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP. New equipment/products and related services may be added to a Contract resulting from this RFP at any time during that Contract to the extent those equipment/products and related services are within the scope of this RFP. Those requests are subject to review and approval of NJPA. Allowable new equipment/products and related services generally include new updated models of equipment/products and related services and or enhanced services previously offered which could reflect new technology and improved functionality.

5.34 DELETIONS. New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

5.35 PRICE CHANGES: Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

5.35.1 *Price decreases:* NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

5.35.2 *Price increases:* Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/product or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed.

Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases. Price increases will not exceed industry standard.

5.36 Submit the following documentation to request a pricing change:

5.36.1 Signed NJPA Price and Product Change Form

5.36.2 Single Statement of Pricing Excel spreadsheet identifying all equipment/products and services being offered and their pricing. Each complete pricing list will be identified by its "Effective Date." Each successive price listing identified by its "Effective Date" will create a "Product and Price History" for the Contract. Each subsequent pricing update will be saved using the naming convention of "(Vendor Name) pricing effective XX/XX/XXXX."

5.36.2.1 Include all equipment/products and services regardless of whether their prices have changed. By observing this convention we will:

5.36.2.1.1 Reduce confusion by providing a single, easy to find, current pricing sheet for each Vendor.

5.36.2.1.2 Create a historical record of pricing.

5.37 NJPA reserves the right to review additional catalogs being proposed as additions or replacements to determine if the represented products and services reflect and relate to the scope of this RFP. Each new catalog received may have the effect of adding new product offerings and deleting products no longer carried by the Vendor. New catalogs shall apply to the Contract only upon approval of the NJPA. Non-approved use of catalogs may result in termination for convenience. New price lists or catalogs found to be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience.

5.38 Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

5.39 Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

5.40 All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each "Pricing" sheet created as a result of each request for product, service, or pricing change.

5.41 Each subsequent "Single Statement of Product and Pricing" will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP. Proposers are required to create a historical record of pricing annually by submitting updated pricing referred to as a "Single Statement of Product/Equipment and Related Services Contract Price Update". This pricing update is required at a minimum of once per contract year.

J. PAYMENT TERMS

5.42 Payment terms will be defined by the Proposer in the Proposer's Response. Proposers are encouraged to offer payment terms through P Card services if applicable.

5.43 If applicable, identify any leasing programs available to NJPA and NJPA Members as part of your proposal. Proposers should submit an example of the lease agreement to be used and should identify:

5.43.1 General leasing terms such as:

5.43.1.1 The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and

5.43.1.2 The index rate being adjusted; and

5.43.1.3 The "Purchase Option" at lease maturity ($1, or fair market value); and

5.43.1.4 The available term in months of lease(s) available.

5.43.2 Leasing company information such as:

5.43.2.1 The name and address of the leasing company; and

5.43.2.2 Any ownership, common ownership, or control between the Proposer and the Leasing Company.

K. SALES TAX

5.44 Sales and other taxes shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax exempt status to the Vendor. When ordering, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

L. SHIPPING

5.45 NJPA desires an attractive freight program. A shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of equipment/products. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. COD orders will be accepted if both parties agree. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order.

5.46 Selection of a carrier for shipment or expedited shipping will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the party who requested.

5.47 Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

5.48 All shipping and re-stocking fees must be identified in the price program. Certain industries providing made to order product/equipment may not allow returns. Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects.

5.49 Proposer agrees shipping errors will be at the expense of the Vendor.

5.50 Delivery effectiveness is very important aspect of this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

5.51 Delivered products/equipment must be properly packaged. Damaged equipment/products will not be accepted, or if the damage is not readily apparent at the time of delivery, the equipment/products shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the equipment/products at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the equipment/products at the time of delivery.

5.52 Vendor shall deliver Contract conforming products/equipment in each shipment and may not substitute products/equipment without approval from NJPA or the NJPA Member.

5.53 NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior equipment/products which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of non-conforming equipment/products, NJPA Member will notify the Vendor as soon as possible and the Vendor will replace non-conforming equipment/products with conforming equipment/products acceptable to the NJPA member.

5.54 Throughout the term of the Contract, Proposer agrees to pay for return shipment on equipment/products that arrives in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged equipment/products.

5.55 Vendor may not substitute equipment/products unless agreed to by both parties.

5.56 Unless contrary to other parts of this solicitation, if the product/equipment or the tender of delivery fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

6 EVALUATION OF PROPOSALS

A. PROPOSAL EVALUATION PROCESS

6.1 The NJPA Proposal Evaluation Committee will evaluate proposals received based on a 1,000 point evaluation system. The Committee establishes both the evaluation criteria and designates the relative importance of those criteria by assigning possible scores for each category on Form G of this RFP.

6.2 NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities. Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately only one of the factors taken into consideration in the evaluation and award.

6.3 Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Evaluation Committee. To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under "Proposer Responsiveness."

B. PROPOSER RESPONSIVENESS

6.4 All responses are evaluated for level one and level two responsiveness. If a response does not reasonably and substantially conform to all the terms and conditions in the solicitation or it requests unreasonable exceptions, it may be considered non-responsive.

6.5 All proposals must contain answers or responses to the information requested in the proposal forms. The following items constitute the test for "Level One Responsiveness" and are determined on the proposal opening date. If these are not received, your response may be disqualified as non-responsive.

6.6 Level One Responsiveness includes:

- **6.6.1** received prior to the deadline for submission or it will be returned unopened;
- **6.6.2** properly addressed and identified as a sealed proposal with a specific opening date and time;
- **6.6.3** pricing document (with apparent discounts), sample certificate of liability insurance and all forms fully completed even if "not applicable" is the answer;
- **6.6.4** original signed, completed and dated RFP forms C, D, and F hard copy signed signature page Only from forms A and P from this RFP and if applicable, all counter signed addenda issued in relation to this RFP;
- **6.6.5** an electronic copy (CD or flash drive) of the entire response; and
- **6.6.6** falls within the scope as determined by the NJPAs Proposal Evaluation Committee.

6.7 "Level Two" responsiveness is determined through the evaluation of the remaining items listed under Proposal Evaluation Criteria below. These items are not arranged in order of importance and each item may encompass multiple areas of information requested. Any questions not answered will result in a loss of points from relevant Form G criteria and may lead to non-award if too many areas are unanswered resulting in the inability for evaluation team to effectively review your response.

C. PROPOSAL EVALUATION CRITERIA

6.8 Evaluation Criteria: Forms A and P includes a series of questions encompassing, but not limited to, the following categories:

- **6.8.1** Company Information & Financial Strength
- **6.8.2** Industry Requirements & Marketplace Success
- **6.8.3** Ability to Sell & Deliver Service Nationwide
- **6.8.4** Marketing Plan
- **6.8.5** Other Cooperative Procurement Contracts
- **6.8.6** Value Added Attributes
- **6.8.7** Payment Terms & Financing Options
- **6.8.8** Warranty
- **6.8.9** Equipment/Products/Services
- **6.8.10** Pricing & Delivery
- **6.8.11** Industry Specific Items

6.9 Evaluation of each Proposer's Response will take into consideration as a minimum response but not necessarily limited to these items.

D. OTHER CONSIDERATION

6.10 The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the equipment/products and/or related services.

6.11 NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

6.12 If a manufacturer or supplier chooses not to produce or supply a full selection and representation of product/equipment and related services it has available which fall within the scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

6.13 NJPA reserves the right to request and test equipment/products and related services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer's resources, personnel, and organization within three (3) days.

6.14 Past performance information is relevant information regarding a Proposer's actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer's record of conforming to specifications and standards of good workmanship. The Proposer's history for reasonable and cooperative behavior and commitment to member satisfaction shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer's businesslike concern for the interests of the NJPA Member.

6.15 NJPA shall reserve the right to reject any or all proposals.

E. COST COMPARISON

6.16 NJPA uses a variety of evaluation methodologies, including but not limited to a cost comparison of specific and deemed to be like equipment/products. NJPA reserves the right to use this process in the event the Proposal Evaluation Committee feels it is necessary to make a final determination.

6.17 This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A "Market Basket" of identical (or substantially similar) equipment/products and related services may be selected by the NJPA Evaluation Committee and the unit cost will be used as a basis for determining the point value. The "Market Basket" will be selected by NJPA from all product categories as determined appropriate by NJPA.

F. MARKETING PLAN

6.18 A key element of an NJPA awarded a contract will be based on your marketing response to this solicitation. An awarded Vendor's sales force will be the primary source of communication to the customers and NJPA members directly relating to the contract success. Success in marketing is dependent on delivery of messaging and communication relating to the contract value, knowledge of contract, proper use and the delivery of contracted equipment/products and related services to the end user. Much of the success and sales reward is a direct result of the commitment to the Contract by the vendor and sales teams. NJPA reserves the right to deem a proposer non-responsive or to not award based on an unacceptable or incomplete marketing plan

6.19 NJPA marketing expectations include:

6.19.1 Vendors ability to demonstrate the leveraging of a national sales force and/or dealer network. Vendors must demonstrate the ability to sell, service and deliver products and equipment through acceptable distribution channels to customers and NJPA members in all 50 states. Demonstrate fully the sales and service capabilities of your company through your response; outline Vendor's national sales force network in terms of numbers and geographic location and method of distribution of the equipment/products and related services. Service may be independent of the equipment/product sales pricing but is encouraged to be a part of your response and contract.

6.19.2 Vendor is invited to demonstrate the ability to successfully market, promote and communicate the opportunity of an NJPA contract to current and potential members nationwide. NJPA desires a marketing plan that communicates the value of the contract to members.

6.19.3 Vendor is expected to be receptive to NJPA sales trainings. Vendor shall provide a venue for appropriate personnel from both management and the sales force who will be trained. NJPA commits to providing contract sales training and awareness regarding all aspects of communicating the value of the contract itself including: the authority of NJPA to offer the contract to its Members, value and utility the contract delivers to NJPA Members, scope of NJPA Membership, authority of NJPA Members to utilize NJPA procurement contracts, marketing and sales methods, and overall vertical strategies.

6.19.4 Vendor is expected to demonstrate the intent to a commit to full embracement of the NJPA contract. Identify the appropriate levels of sales management and sales force that will need to understand the value of and the internal procedures necessary, to deliver the NJPA contract solution and message to NJPA and NJPA Members. NJPA shall provide a general schedule and a variety of methods surrounding when and how those individuals will be trained.

6.19.5 Vendor will outline their proposed involvement in the promotion of a contract resulting from this RFP through applicable industry trade show exhibits and related customer meetings. Proposers are encouraged to consider participation with NJPA at NJPA embraced national trade shows.

6.19.6 Vendor must exhibit the willingness and ability to actively market and develop contract specific marketing materials including, but not limited to:

6.19.6.1 Complete Marketing Plan. Proposer shall submit a marketing plan outlining how the Vendor will launch the NJPA contract to current and potential NJPA Members. NJPA requires the Awarded Vendors to embrace and actively promote the Contract in cooperation with the NJPA.

6.19.6.2 Printed Marketing Materials. Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logo and contact information to be used in the NJPA directory and other approved marketing publications.

6.19.6.3 Contract announcements and advertisements. Proposer will outline in the marketing plan their anticipated contract announcements, advertisements in industry periodicals and other direct or indirect marketing activities promoting the awarded NJPA contract.

6.19.6.4 Proposer's Website. Proposer will identify how an Awarded Contract will be displayed and linked on the Proposer's website. An on-line shopping experience for NJPA Members is desired when applicable.

6.19.7 An NJPA Vendor Contract Launch will be scheduled during a reasonable time frame after the award and held at the NJPA office in Staples, MN.

6.20 Proposer shall identify their commitment to develop a sales/communication process to facilitate NJPA membership and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA.

G. CERTIFICATE OF INSURANCE

6.21 Vendors shall provide evidence of liability insurance coverage identified below in the form of a Certificate of Insurance or an ACCORD binder form with their proposal. Upon Award issued pursuant to this contract and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of a Certificate of Insurance identifying the coverage required below and identifying NJPA as a "Certificate Holder." Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

6.22 Any exceptions and/or assumptions to the insurance requirements ***must*** be identified on ***Attachment C.*** Exceptions and/or assumptions will be taken into consideration as part of the evaluation process; however, vendors must be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, NJPA will not consider any additional exceptions and/or assumptions during negotiations. Upon contract award, the successful vendor ***must*** provide the Certificate of Insurance identifying the coverage as specified.

6.23 Insurance Liability Limits: The awarded vendor must maintain, for the duration of its contract, $1.5 million in General Liability insurance coverage or General Liability insurance in conjunction with an Umbrella for a total combined coverage of $1.5 million. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

6.23.1 Minimum Scope and Limits of Insurance: Vendor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

6.23.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

6.23.1.2 Each Occurrence $1,500,000

6.24 Insurance Requirements: The limits listed herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. NJPA in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase additional insurance as may be determined necessary.

6.25 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an "A.M. Best" rating of not less than A- VII. NJPA in no way warrants that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

6.26 Subcontractors: Vendors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Vendor shall furnish to NJPA separate certificates for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

H. ORDER PROCESS AND/OR FUNDS FLOW

6.27 Please propose an order process and funds flow. The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP. Administrative fees may also be used for purposes as allowed by Minnesota State Law and approved by the Board of Directors.

6.28 Additional Terms and Conditions can be added at the PO level if both Vendor and Member agree.

I. ADMINISTRATIVE FEES

6.29 Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

6.29.1 Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction; and

6.29.2 Included in, and not added to, the pricing included in Proposer's Response to the RFP; and

6.29.3 Designed to offset the anticipated costs of NJPA's involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract resulting from this RFP. Administrative fees may also be used for other purposes as allowed by Minnesota law. Administrative fees may also be used for other purposes as allowed by Minnesota law.

6.29.4 Typical administrative fees for a B-TO-G order process and funds flow is 2.0%. NJPA does not mandate a specific fee percentage, we merely state that 2% is a typical fee across our contracts. The administrative fee percent varies among vendors, industries and responses.

6.29.5 NJPA awarded contract holder is responsible for the Administrative Fee and related reporting.

6.30 The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire Form P.

J. VALUE ADDED

6.31 **Examples of Value Added Attributes:** Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be "Value Added Services" for products where a typical buyer may not have the ability to perform these functions.

6.32 **Where to document Value Added Attributes:** The opportunity to indicate value added dimensions and such advancements will be available in the Proposer's Questionnaire and Proposer's product and service submittal.

6.33 Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES and advances to provide products/services, supplies meeting and/or exceeding today's industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

6.34 **Minority, Small Business, and Women Business Enterprise (WMBE) participation:** It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase product/equipment and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide "Credits" to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. NJPA is committed to facilitating the realization of such "Credits" through certain structuring techniques for transactions resulting from this RFP.

6.35 **Environmentally Preferred Purchasing Opportunities:** There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. "Green" characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. Please identify any Green characteristics of the product/equipment and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as "green" and by which certifying agency.

6.36 **On-Line Requisitioning systems:** When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

6.37 **Financing:** The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

6.38 **Technology**: Technological advances, increased efficiencies, expanded service and other related improvements beyond today's NJPA member's needs and applicable standards.

K. WAIVER OF FORMALITIES

6.39 NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

7 POST AWARD OPERATING ISSUES

A. SUBSEQUENT AGREEMENTS

7.1 **Purchase Order.** Purchase Orders for equipment/products and/or related services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor's sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase Orders that "This purchase order is issued pursuant to NJPA procurement contract #XXXXXX." A Purchase Order is an offer to purchase product/equipment and related services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

7.2 **Governing Law.** Purchase Orders shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

7.3 **Additional Terms and Conditions.** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose, intent or currently established terms and conditions contain in this RFP document.

7.4 Specialized Service Requirements. In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part or within the scope of the awarded Contract.

7.5 Performance Bond. At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for product/equipment and related services. If a purchase order is cancelled for lack of a required performance bond by the member agency, it shall be the recommendation of NJPA that the current pending Purchase Order be canceled. Each member has the final decision on Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

B. NJPA MEMBER SIGN-UP PROCEDURE

7.6 Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership with NJPA. NJPA membership is at no cost, obligation or liability to the Member or the Vendor.

C. REPORTING OF SALES ACTIVITY

7.7 A report of the total gross dollar volume of all equipment/products and related services purchased by NJPA Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will provided by NJPA to include, but not limited to, name and address of purchasing agency, member number, amount of purchase, and a description of the items purchased.

7.7.1 Zero sales reports: Awarded Vendors are responsible for providing a quarterly sales report of contract sales every quarter regardless of the existence or amount of sales.

D. AUDITS

7.8 No more than once per calendar year during the Contract term, Vendor may be required to make available to NJPA the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and all payments made by NJPA members for all equipment/products and related services purchased under the awarded Contract. NJPA must provide written notice of exercise of this requirement with no less than fourteen (14) business days' notice. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged under of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

E. HUB PARTNER

7.9 **Hub Partner:** NJPA Members may request to be served through a "Hub Partner" for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits or other considerations.

7.10 **Hub Partner Fees:** Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member. The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction; and to the extent that the Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation shall be documented to show it is "Executed for the Benefit of [NJPA Member Name]."

F. TRADE-INS

7.11 The value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified "Trade-In" value shall be viewed as a down payment and credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration.

G. OUT OF STOCK NOTIFICATION

7.12 Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of-stock occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of-stock item(s), and may suggest equivalent substitute(s). The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order. Under no circumstance is Proposer permitted to make unauthorized substitutions. Unfilled or substituted item(s) shall be indicated on the packing list.

H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

7.13 NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure. Some examples of material breach include, but are not limited to:

7.13.1 The Vendor provides products/equipment or related services that does not meet reasonable quality standards and is not remedied under the warranty;

7.13.2 The Vendor fails to ship the products/equipment or related services or provide the delivery and services within a reasonable amount of time;

7.13.3 NJPA has reason to believe the Vendor will not or cannot perform to the requirements or expectations of the Contract and issues a request for assurance and Vendor fails to respond;

7.13.4 The Vendor fails to observe any of the material terms and conditions of the Contract;

7.13.5 The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.

7.13.6 The Vendor fails to report quarterly sales;

7.13.7 The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA defined in the NJPA Contract Launch.

7.13.8 In the event the contract has no measurable and defining value or benefit to NJPA or the NJPA member.

7.14 Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section. If the issue is not resolved within sixty (60) days, contract will be terminated.

7.15 Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

7.16 NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Awarded Vendor will be responsible for disclosing to NJPA any litigation, bankruptcy or suspensions/disbarments that occur during the contract period. Failure to disclose may result in an immediate termination of the contract.

7.17 NJPA may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

7.18 NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

7.19 Events of Automatic termination to include, but not limited to:

7.19.1 Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,

7.19.2 Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

8 GENERAL TERMS AND CONDITIONS

A. ADVERTISING A CONTRACT RESULTING FROM THIS RFP

8.1 Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

B. APPLICABLE LAW

8.2 **NJPA's interest in a contract resulting from this RFP:** Not withstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA's interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the product/equipment and services procured there from.

8.3 NJPA Compliance with Minnesota Procurement Law: NJPA will exhaust all avenues to comply with each unique state law or requirement whenever possible. It is the responsibility of each participating NJPA member to ensure to their satisfaction that NJPA contracting process falls within these laws and applicable laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with their own requirements and procurement regulations.

8.4 Governing Law with respect to delivery and acceptance: All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern NJPA contracts resulting from this solicitation.

8.5 Jurisdiction: Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota unless otherwise agreed to.

> **8.5.1** Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

8.6 Vendor Compliance with applicable law: Vendor(s) shall comply with all federal, state, or local laws applicable to or pertaining to the transaction, acquisition, manufacturer, suppliers or the sale of the equipment/products and relating services resulting from this RFP.

8.7 Other Laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

8.8 Indemnity: Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

8.9 Prevailing Wage: It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

8.10 Patent and Copyright Infringement: If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and hold harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

C. ASSIGNMENT OF CONTRACT

8.11 No right or interest in this Contract shall be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor shall be made without prior written permission of the NJPA. NJPA shall notify members by posting approved assignments on the NJPA website (www.njpacoop.org) within 15 days of NJPA's approval.

8.12 If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A change of name agreement will not change the contractual obligations of the Vendor.

D. LIST OF PROPOSERS

8.13 NJPA will not maintain or communicate to a list of proposers. All interested proposers must respond to the solicitation as a result of NJPA solicitation advertisements indicated. Because of the wide scope of the potential Members and qualified national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

E. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

8.14 The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

F. DATA PRACTICES

8.15 All materials submitted in response to this RFP will become property of the NJPA and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. If the Responder submits information in response to this RFP that it believes to be nonpublic information, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

8.15.1 make the request within thirty days of award/non-award, and include the appropriate statutory justification. Pricing is generally not redactable. The NJPA Legal Department shall review the statement to determine whether the information shall be withheld. If the NJPA determines to disclose the information, the Bids & Contracts department of the NJPA shall inform the Proposer, in writing, of such determination; and

8.15.2 defend any action seeking release of the materials it believes to be nonpublic information, and indemnify and hold harmless the NJPA, its agents and employees, from any judgments or damages awarded against the NJPA in favor of the party requesting the materials, and any and all costs connected with that defense.

8.16 This indemnification survives the NJPA's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the confidential information is in possession of the NJPA. When the situation warrants, Proposer may be able redact additional nonpublic information after the evaluation process if legal justification is provided and accepted by NJPA.

G. ENTIRE AGREEMENT

8.17 The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract. A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award & Acceptance document (Form E).

H. FORCE MAJEURE

8.18 Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

I. GRATUITIES

8.19 NJPA may cancel an awarded Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of the NJPA.

J. HAZARDOUS SUBSTANCES

8.20 Proper and applicable Material Safety Data Sheets (MSDS) that are in full compliance with OSHA's Hazard Communication Standard must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

K. LICENSES

8.21 Proposer shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business that is anticipated to be conducted with NJPA and NJPA members by the Proposer.

8.22 All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and related services to NJPA and NJPA Members nationally. Documentation of required said licenses and authorities, if applicable, is requested to be included in the proposer's response.

L. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

8.23 The awarded Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or the NJPA member.

M. NON-WAIVER OF RIGHTS

8.24 No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

N. PROTESTS OF AWARDS MADE

8.25 Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate Minnesota state statutes. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. A protest must include:

8.25.1 The name, address and telephone number of the protester;

8.25.2 The original signature of the protester or its representative (you must document the authority of the Representative);

8.25.3 Identification of the solicitation by RFP number;

8.25.4 Identification of the statute or procedure that is alleged to have been violated;

8.25.5 A precise statement of the relevant facts;

8.25.6 Identification of the issues to be resolved;

8.25.7 The aggrieved party's argument and supporting documentation;

8.25.8 The aggrieved party's statement of potential financial damages; and

8.25.9 A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

O. SUSPENSION OR DISBARMENT STATUS

8.26 If within the past five (5) years, any firm, business, person or Proposer responding to NJPA solicitation and submitting a proposal has been lawfully terminated, suspended or precluded from participating in any public procurement activity with a federal, state or local government or education agency the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

P. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

8.27 An Affirmative Action Plan, Certificate of Affirmative Action or other documentation regarding Affirmative Action may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

8.28 Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors shall comply with any such requirements or requests.

Q. SEVERABILITY

8.29 In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from an awarded Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

R. RELATIONSHIP OF PARTIES

8.30 No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal–agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

9 FORMS

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Form A

PROPOSER QUESTIONNAIRE- General Business Information

*(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on **Form P**)*

Proposer Name: ____________________________Questionnaire completed by: ________________________________

Please identify the person NJPA should correspond with from now through the Award process:

Name: ____________________________________ E-Mail address: _______________________________________

Provide an answer to all questions directly below each question (do not leave blank, mark NA if not applicable) and address all requests made in this RFP. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators. ***Please use the Microsoft Word document version of this questionnaire to respond to the questions contained herein.***

Company Information & Financial Strength

1) Why did you respond to this RFP?
2) What are your company's expectations in the event of an award?
3) Provide the full legal name, address, tax identifications number, and telephone number for your business.
4) Demonstrate your financial strength and stability.
5) Are you now, or have you ever been the subject of a bankruptcy action? Please explain.
6) Provide a brief history of your company that includes your company's core values and business philosophy.
7) How long has your company been in the HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES industry?
8) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products/equipment and related services being proposed?
   a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products/equipment and related services you are proposing.
   b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products/equipment and related services proposed.
   c) Are these individuals your employees, or the employees of a third party?
   d) If applicable, is the Dealer Network independent or company owned?
9) Please provide your bond rating, and/or a credit reference from your bank.
10) Provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held by your organization in pursuit of the commerce and business contemplated by this RFP.
11) Provide a detailed explanation outlining licenses and certifications both required to be held, and actually held, by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."
12) Provide all "Suspension or Disbarment" information as defined and required herein.
13) In addition to the $1.5 million in General Liability and/or in conjunction with umbrella insurance coverage, what level of automobile and workers compensation insurance does your organization currently have? If none, please explain.
14) Within the RFP category there is potential to be several different sub-categories of solutions; list sub category title/s that best describe your equipment/products, services and supplies.

Industry Requirements &Marketplace Success

15) List and document recent industry awards and recognition.
16) Supply three references/testimonials from customers of like status to NJPA Members to include Government and Education agencies. Please include the customer's name, contact, and phone number.

17) Provide a list of your top 5 Government and/or Education customers (entity name is optional) including: entity type, the state the entity is located in, scope of the project/s, size of transaction/s and dollar volumes from the past 3 fiscal years.
18) What percentages of your current (within the past three (3) fiscal years) national sales are to the government and education verticals? Indicate government and education verticals individually.

Proposer's Ability to Sell and Deliver Service Nationwide

19) Please describe your company sales force in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale and services of the equipment/products contemplated in this RFP?
20) Please describe your dedicated dealer network and number of individual sales force within your dealer network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sales distribution and delivery of your equipment/products and related services contemplated in this RFP?
21) Please describe your dedicated company service force or dedicated network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP?
22) Please describe your dedicated dealer service force or network in terms of numbers geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP? Additionally, please describe any applicable road service and do they offer the ability to service customers at the customer's location?
23) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time capabilities and commitments as a part of this RFP response and awarded contract.
24) Identify any geographic areas or NJPA market segments of the United States you will NOT be fully serving through the proposed contract.
25) Identify any of NJPA Member segments or defined NJPA verticals you will NOT be offering and promoting an awarded contract to? (Government, Education, Non-profit)
26) Define any specific requirements or restrictions as it applies to our members located off shores such as Hawaii and Alaska and the US Islands. Address your off shore shipping program on the Pricing form P of this document.

Marketing Plan

27) Describe your contract sales training program to your sales management, dealer network and/or direct sales teams relating to a NJPA awarded contract.
28) Describe how you would market/promote an NJPA Contract nationally to ensure success.
29) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. Please send a few representative samples of your marketing materials in electronic format.
30) Describe your use of technology and the internet to provide marketing and ensure national contract awareness.
31) Describe your perception of NJPA's role in marketing the contract and your contracted products/equipment and related services.
32) Describe in detail any unique marketing techniques and methods as a part of your proposal that would separate you from other companies in your industry.
33) Describe your company's Senior Management level commitment with regards to embracement, promoting, supporting and managing a resultant NJPA awarded contract
34) Do you view your products/equipment applicable to an E-procurement ordering process?
    ____ Yes ____ No
    a) If yes, describe examples of E-procurement system/s or electronic marketplace solutions that your products/equipment was available through. Demonstrate the success of government and educations customers to ordering through E-procurement.
35) Please describe how you will communicate your NJPA pricing and pricing strategy to your sales force nationally?

Other Cooperative Procurement Contracts

36) Describe your level of experience with national, state and local cooperative contracts.
37) What is the annual dollar sales volume generated through each of the contract(s) identified in your answer to the previous question.
38) Identify any GSA Contracts held or utilized by the Proposer.

39) What is the annual combined dollar sales volume for each of these contracts?
40) If you are awarded the NJPA contract, are there any market segments or verticals (e.g., higher education, K-12 local governments, non-profits etc.) or geographical markets where the NJPA contract will not be your primary contract purchasing vehicle? If so, please identify those markets and which cooperative purchasing agreement will be your primary vehicle.
41) How would you leverage an NJPA awarded contract in your sales process?
42) Identify a proposed administrative fee payable to NJPA for facilitation, management and promotion of the NJPA contract, should you be awarded. This fee is typically calculated as a percentage of Contract sales and not a line item addition to the customers cost of goods.

Value Added

43) If applicable, describe any product/equipment training programs available as options for NJPA members. If applicable, do you offer equipment operator training as well as maintenance training? ____ Yes ____ No
44) Is this training standard as a part of a purchase or optional?
45) Describe current technological advances your proposed equipment/products and related services offer.
46) Describe your "Green" program as it relates to your company, your products/equipment, and your recycling program, including a list of all green products accompanied by the certifying agency for each (if applicable).
47) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations and the general minority and small business program of your organization as it relates to a Contract resulting from this RFP.
48) Identify any other unique or custom value added attributes of your company or your products/equipment or related services. What makes your proposed solutions unique in your industry as it applies to NJPA members?
49) Other than what you have already demonstrated or described, what separates your company, your products/equipment and related services from your competition?
50) Identify and describe any service contract options included in the proposal, or offered as a proposed option, for the products/equipment being offered.
51) Identify your ability and willingness to offer an awarded contract to qualifying member agencies in Canada specifically and internationally in general.
52) Describe any unique distribution and/or delivery methods or options offered in your proposal.

NOTE: Questions regarding Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, and Industry Specific Items are addressed on Form P.

Signature: ______________________________ Date: ____________________

Form B

PROPOSER INFORMATION

Company Name: ____________________

Address: ____________________

City/State/Zip: ____________________

Phone: ____________________ Fax: ____________________

Toll Free Number: ____________________ E-mail: ____________________

Web site: ____________________

Voids sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

COMPANY PERSONNEL CONTACTS

Authorized Signer for your organization*:

Name: ____________________

Email: ____________________ Phone: ____________________

* By executing Form F, the "Proposer's Assurance of Compliance," you are certifying this person identified here has their authorization to sign on behalf of your organization:

Author of your proposal response

Name: ____________________ Title: ____________________

Email: ____________________ Phone: ____________________

Your Primary Contact person regarding your proposal:

Name: ____________________ Title: ____________________

Email: ____________________ Phone: ____________________

Other important contact information:

Name: ____________________ Title: ____________________

Email: ____________________ Phone: ____________________

Name: ____________________ Title: ____________________

Email: ____________________ Phone: ____________________

Form C

EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS AND SOLUTIONS REQUEST

Company Name: ____

Note: **Original must be signed** and inserted in the inside front cover pouch.

Any exceptions to the Terms, Conditions, Specifications, or Proposal Forms contained herein shall be noted in writing and included with the proposal submittal. Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA and may or may not be included in the final contract. NJPA may clarify exceptions listed here and document the results of those clarifications in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception	NJPA ACCEPTS

Proposer's Signature: ______________________________ **Date:** ____________

NJPA's clarification on exception/s listed above:

Contract Award
RFP 032515 #

FORM D

Formal Offering of Proposal
(To be completed Only by Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES
In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: ______________________ Date: ______________________________

Company Address: ____

City: _____________________________ State: __________ Zip: ________________

Contact Person: ______________________ Title: ______________________________

Authorized Signature (ink only): ______________________ ______________________
(Name printed or typed)

Form E

Contract Acceptance and Award

(To be completed only by NJPA)

NJPA 032515 # ____

____

Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be ___________________________, 20________ and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature: ______________________________ ______________________________
NJPA Executive Director (Name printed or typed)

Awarded this _______ day of_________________________, 20__________ **NJPA Contract Number 032515 #**

NJPA Authorized signature: ______________________________ ______________________________
NJPA Board Member (Name printed or typed)

Executed this ______ day of __________________________, 20__________ **NJPA Contract Number 032515 #**

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name ____

Vendor Authorized signature: ______________________________ ______________________________
(Name printed or typed)

Title: ____

Executed this ____________ day of __________________, 20__________ **NJPA Contract Number 032515 #**

Form F

PROPOSER ASSURANCE OF COMPLIANCE

Proposal Affidavit Signature Page

PROPOSER'S AFFIDAVIT

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any equipment/products and related services, all applicable licenses necessary for such delivery to NJPA members agencies nationally, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract; and

2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP which tends to, or does, lessen or destroy free competition of the Contract sought for by this RFP; and

3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract; and

4. Neither the Proposer nor any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985; and

5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal; and

6. If awarded a contract, the Proposer will provide the equipment/products and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation; and

7. The undersigned, being familiar with and understand the expectations requested and outlined in this RFP under consideration, hereby proposes to deliver through valid requests, Purchase Orders or other acceptable forms ordering and procurement by NJPA Members. Unless otherwise indicated, requested and agreed to on a valid purchase order per this RFP, only new, unused and first quality equipment/products and related services are to be transacted with NJPA Members relating to an awarded contract; and

8. The Proposer has carefully checked the accuracy of all proposed products/equipment and related services and listed total price per unit of purchase in this proposal to include shipping and delivery considerations. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment as outlined and proposed; and

9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date proposals were opened regarding this RFP; and

10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders; and

11. The Proposer understands that submitted proposals which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "nonpublic" **will not** be accepted by NJPA. Pursuant to Minnesota Statute §13.37 only specific parts of the proposal may be labeled a "trade secret." All proposals are nonpublic until the contract is awarded; at which time, both successful and unsuccessful vendors' proposals become public information.

12. The Proposer understands and agrees that NJPA will not be responsible for any information contained within the proposal.

13. By signing below, the Proposer understands it is his or her responsibility as the Vendor to act in protection of labeled information and agree to defend and indemnify NJPA for honoring such designation. Proposer duly realizes failure to so act will constitute a complete waiver and all submitted information will become public information; additionally failure to label any information that is released by NJPA shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands and agrees to comply with the terms and conditions specified above.

Company Name: ____

Contact Person for Questions: ____

(Must be individual who is responsible for filling out this Proposer's Response form)

Address: ____

City/State/Zip: ____

Telephone Number: ______________________ Fax Number: ______________________

E-mail Address: ____

Authorized Signature: ____

Authorized Name (typed): ____

Title: ____

Date: ____

Notarized

Subscribed and sworn to before me this __________ day of ______________, 20__________

Notary Public in and for the County of ______________________________ State of __________

My commission expires: ____

Signature: ____

Form G

OVERALL EVALUATION AND CRITERIA

For the Proposed Subject HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

Conformance to Terms & Conditions	50	
Financial, Industry Requirements & Marketplace Success	75	
Proposer's Ability to Sell and Deliver Service Nationwide	100	
Proposer's Marketing Plan	50	
Value Added Attributes	75	
Warranty	50	
Equipment/Products and Related Services	200	
Pricing	400	
TOTAL POINTS	**1000**	

Reviewed by: ______________________________ Its______________________________

______________________________ Its______________________________

Form P

PROPOSER QUESTIONNAIRE

Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, Industry Specific

Proposer Name: ____

Questionnaire completed by: ____

Payment Terms and Financing Options

1) Identify your payment terms if applicable. (Net 30, etc.)
2) Identify any applicable leasing or other financing options as defined herein.
3) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).
    a. Please specify if you will be including your dealer network in this proposal. If so, please specify how involved they will be. (For example, will he Dealer accept the P.O.?), and how are we to verify the specific dealer is part of your network?
4) Do you accept the P-card procurement and payment process?

Warranty

5) Describe, in detail, your Manufacture Warranty Program including conditions and requirements to qualify, claims procedure, and overall structure.
6) Do all warranties cover all products/equipment parts and labor?
7) Do warranties impose usage limit restrictions?
8) Do warranties cover the expense of technicians travel time and mileage to perform warranty repairs?
9) Please list any other limitations or circumstances that would not be covered under your warranty.
10) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs. How will NJPA Members in these regions be provided service for warranty repair?

Equipment/Product/Services, Pricing, and Delivery

11) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.
12) Provide a general narrative description of your pricing model identifying how the model works (line item and/or published catalog percentage discount).
13) Please quantify the discount range presented in this response pricing as a percentage discount from MSRP/published list.
14) Provide an overall proposed statement of method of pricing for individual line items, percentage discount off published product/equipment catalogs and/or category pricing percentage discount with regard to all equipment/products and related services and being proposed. Provide a SKU number for each item being proposed.
15) Propose a strategy, process, and specific method of facilitating "Sourced Equipment/Products and/or related Services" (AKA, "Open Market" items or "Non-Standard Options").
16) Describe your NJPA customer volume rebate programs, as applicable.
17) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included "Pricing" submitted with your proposal response. Identify to whom these charges are payable to and their relationship to Proposer.
18) If freight, delivery or shipping is an additional cost to the NJPA member, describe in detail the complete shipping and delivery program.

19) As an important part of the evaluation of your offer, indicate the level of pricing you are offering.
Prices offered in this proposal are:

_______a. Pricing is the same as typically offered to an individual municipality, Higher Ed or school district.

_______b. Pricing is the same as typically offered to GPOs, cooperative procurement organizations or state purchasing departments.

_______c. Better than typically offered to GPOs, cooperative procurement organizations or state purchasing departments.

_______d. Other; please describe.

20) Do you offer quantity or volume discounts?

_____ YES _____ NO Outline guidelines and program.

21) Describe in detail your proposed exchange and return program(s) and policy(s).

22) Specifically identify those shipping and delivery and exchange and returns programs as they relate to Alaska and Hawaii and any related off shore delivery of contracted products/ equipment and related services

23) Please describe any self-audit process/program you plan to employ to verify compliance with your anticipated contract with NJPA. Please be as specific as possible.

Industry-Specific Items

24) What is your US market share for the solutions you are proposing in this response?
25) Do you hold any industry-specific quality management system certifications such as ISO 9001?
26) Do you hold any environmental management system certifications such as ISO 14001?
27) What is your Canadian market share (if any) for the solutions you are proposing in this response?
28) Is your warranty program handled directly, or does it require a pass through to another manufacturer?
29) For how many years have the models you are proposing in this response been available in the marketplace?
30) What is your parts order fill rate?
31) Do you provide preventive maintenance programs for the solutions you are proposing in this response?

Signature: ____ Date: ____________________

10 PRE-SUBMISSION CHECKLIST

Check when Completed	Contents of Your Bid Proposal	Hard Copy Required Signed and Dated	Electronic Copy Required - CD or Flash Drive
	Form A: Proposer Questionnaire with all questions answered completely	X - signature page only	X
	Form B: Proposer Information		X
	Form C: Exceptions to Proposal, Terms, Conditions, and Solutions Request	X	X
	Form D: Formal Offering of Proposal	X	X
	Form E. Contract Acceptance and Award		X
	Form F: Proposers Assurance of Compliance	X	X
	Form P: Proposer Questionnaire with all questions answered completely	X-signature page only	X
	Certificate of Insurance with $1.5 million coverage	X	X
	Copy of all RFP Addendums issued by NJPA	X	X
	Pricing for all Products/Equipment/Services within the RFP being proposed		X
	Entire Proposal submittal including signed documents and forms.		X
	All forms in the Hard Copy Required Signed and Dated should be inserted in the front of the submitted response, unbound.		
	Package containing your proposal labeled and sealed with the following language: "Competitive Proposal Enclosed, Hold for Public Opening XX-XX-XXXX"		
	Response Package mailed and delivered prior to deadline to: NJPA, 202 12th St NE, Staples, MN 56479		

11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 1. Instructions For Vendor

Pursuant the NJPA RFP, requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing sections 2, 3 and 4 of the NJPA Price and Product Change Request Form and signature of an authorized Vendor employee in section 5. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager **AND**: **PandP@njpacoop.org.**

NJPA's due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the "Best Interests of NJPA and NJPA Members." A signed Price and Product Change form will be returned to vendor contact via email.

Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a compete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, "COMPANY 012411-CPY eff 02-12-2013."

> *NOTE:* New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

ADDITIONS. New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP.

DELETIONS. New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

PRICE CHANGES: Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

> *Price decreases:* NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

> *Price increases:* Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/products or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed. Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases.

Refer to section 4 of the RFP for complete "Pricing" details.

Section 2. Vendor Name and Type of Change Request

AWARDED VENDOR NAME: ______________________

NJPA CONTRACT NUMBER: ______________________

CHECK ALL CHANGES THAT APPLY:

☐ Adding Equipment/ Products /Services

☐ Deleting/Discontinuing Equipment/Products/Services

☐ Price Increase

☐ Price Decrease

Section 3. Detailed Explanation of Need for Changes

List equipment/products and/or services that are changing, being added or deleted from previous contract price list along with the percentage change for each item or category. (Attach a separate, detailed document if more than 10 items.)

Provide a general statement and documentation explaining the reasons for these price and/or equipment/product/service changes.

SAMPLES: 1-All paper equipment/products and services increased 5% in price due to transportation and fuel costs (see attached documentation of raw materials increase). 2-The 6400 series floor polisher is added to the product list as a new model replacing the 5400 series. The 6400 series 3% increase reflects technological improvements made that improve the rate of efficiency and useful life. The 5400 series is now included in the "Hot List" at a 20% discount from previous pricing until remaining inventory is liquidated.

If adding equipment/products/services, provide a general statement how these are in the scope.

If changing prices and/or adding equipment/products/services, provide a general statement that the pricing or equipment/products/services is consistent with existing NJPA contract pricing.

11 NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

Section 4. Complete Restatement of Pricing Submitted

A COMPLETE restatement of the pricing including all new and existing equipment/products and services is attached and/or has been emailed to PandP@njpacoop.org.

☐ Yes ☐ No

Section 5. Signatures

Vendor Authorized Signature ______________________ Date ____________

Print Name and Title of Authorized Signer ______________________

NJPA Executive Director Signature ______________________ Date ____________

Appendix A

NJPA The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, Tribal Government, and all other Public Agencies located nationally in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/Local_Government/Cities.shtml
http://nces.ed.gov/globallocator/
https://harvester.census.gov/imls/search/index.asp
http://nccsweb.urban.org/PubApps/search.php
http://www.usa.gov/Government/Tribal-Sites/index.shtml
http://www.usa.gov/Agencies/State-and-Territories.shtml
http://www.nreca.coop/about-electric-cooperatives/member-directory/
Oregon
Hawaii
Washington

Contract Award
RFP 032515 #

FORM D

Formal Offering of Proposal
(To be completed Only by Proposer)

HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES
In compliance with the Request for Proposal (RFP) for HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: Caterpillar Inc. Date: 10 MAR 15

Company Address: 100 NE Adams Street

City:Peoria State: IL. Zip: 61629

Contact Person: Mike Hynes Title: Governmental Account Manager

Authorized Signature (ink only): ______________ Mike Hynes_
(Name printed or typed)

Form E

Contract Acceptance and Award

(To be completed only by NJPA)

NJPA 032515 HEAVY CONSTRUCTION EQUIPMENT WITH RELATED ACCESSORIES, ATTACHMENTS, AND SUPPLIES

Caterpillar, Inc
Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be May 19th, 20 15 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature: ____________ Dr. Chad Coauette
NJPA Executive Director (Name printed or typed)

Awarded this 19th day of May, 20 15 **NJPA Contract Number 032515-CAT**

NJPA Authorized signature: ____________ Scott Veronen
NJPA Board Member (Name printed or typed)

Executed this 19th day of May, 20 15 **NJPA Contract Number 032515-CAT**

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name CATERPILLAR INC.

Vendor Authorized signature: ____________ MIKE HYNES
(Name printed or typed)

Title: GOVERNMENTAL ACCOUNT MANAGER

Executed this 20th day of MAY, 20 15 **NJPA Contract Number 032515-CAT**

Letter of Agreement
To Extend the Contract

Between

Caterpillar, Inc. (Vendor)
100 NE Adams St.
Peoria, IL 61629

And

National Joint Powers Alliance® (NJPA)
202 12th Street NE
Staples, MN 56479
Phone: (218) 894-1930

The Vendor and NJPA have entered into an Agreement (Contract #032515-CAT) for the procurement of Heavy Construction Equipment with Related Accessories, Attachments, and Supplies. This Agreement has an expiration date of May 19, 2019, but the parties may extend the Agreement for one additional year by mutual consent.

The parties acknowledge that extending the Agreement for another year benefits the Vendor, NJPA and NJPA's Members. The Vendor and NJPA therefore agree to extend the Agreement listed above for a fifth year. This existing Agreement will terminate on May 19, 2020. All other terms and conditions of the Agreement remain in force.

National Joint Powers Alliance® (NJPA)

By: Jeremy Schwartz, Its: **Director of Cooperative Contracts & Procurement/CPO**

Name printed or typed: **Jeremy Schwartz**

Date 9-1-17

Caterpillar, Inc.

By: Patricia A Redpath, Its: GOVERNMENT ACCOUNT MANAGER

Name printed or typed: PATRICIA A REDPATH

Date 8/25/17

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
EMPIRE SOUTHWEST, LLC
D/B/A EMPIRE POWER SYSTEMS

[Contractor Proposal]

See following pages.

EMPIRE Since 1950 CAT

11/14/2018

Town of Fountain Hills
Attention: Jeff Pierce
Office: 480-816-5129
Jpierce@fh.az.gov
Re: NIPA Quotation Contract #161534

2018 New Caterpillar 420F2 4ECI Plumbed Standard Equipment

BOOMS, STICKS, AND LINKAGES
14'4" Center pivot excavator style backhoe
Pilot operated joystick hydraulic controls with pattern changer valve
Pilot operated stabilizer controls
Boom transport lock
Swing transport lock
Street pads stabilizer shoes
Anti-drift hydraulics
(Boom, Stick and E-Stick)
Cat Cushion Swing(tm) system
Bucket level indicator
Lift cylinder brace
Return-to-dig (auto bucket positioner)
Self-leveling loader with single lever control
Transmission neutralizer switch
Single Tilt Loader

POWERTRAIN
Cat C4.4, 74.5KW (Net 92HP / 69kW)
Direct Injection Turbo Charged Engine, with ACERT technology.
US EPA Tier4 Final Emissions Compliant with Selective Catalytic Reduction(SCR)
Water separator with service indicator
Thermal starting aid system
Eco mode
A dry-type axial seal air cleaner with integral precleaner, automatic dust ejection system & filter condition indicator
Hydraulically boosted multi-plate wet disk brake with dual pedals & interlock
Differential lock
Drive-line parking brake
High Ambient Cooling Package
Torque converter
Transmission--four speed synchro mesh with power shuttle & neutral safety switch

Hydraulic oil cooler
Pilot control shutoff switch
PPPC, Flow-sharing hydraulic valves
Hydraulic suction strainer

ELECTRICAL
12 volt electrical start
150 ampere alternator
Horn and Backup Alarm
Hazard flashers/turn signals
Halogen head lights (4)
Halogen rear flood lights (4)
Stop and tail lights
Audible system fault alarm
Key start/stop system
880 CCA maintenance free battery
Battery disconnect switch
External/internal power receptacles(12v)
Diagnostic ports for engine and machine
Electronic Control Modules
Remote jump start connector

OPERATOR ENVIRONMENT
Lighted gauge group
Interior rearview mirror
ROPS canopy, Rear Fenders
2-inch retractable seat belt
Tilt steering column
Steering knob
Hand and foot throttle
Automatic Engine Speed Control
One Touch Low Idle
Floor mat and Coat Strap
Lockable storage area
Air suspension seat

OTHER STANDARD EQUIPMENT
Hydrostatic power steering
Standard Storage Box
Transport tie-downs
Ground line fill fuel tank with 44 gallon capacity

Spin-on fuel, engine oil & transmission
oil filters
Outboard planetary rear axles
Open Circuit Breather

HYDRAULICS
Load sensing, variable flow system
with 43 gpm axial piston pump
6 micron hydraulic filter
O-ring face seal hydraulic fittings
Caterpillar XT-3 hose

Ground line fill diesel exhaust fluid
tank with 5 gallon capacity
Rubber impact strips on radiator guards
Bumper
CD-ROM Parts Manual
Backhoe Safety Manual
Operations and Maintenance Manual
Lockable hood
Tire Valve Stem Protection
Long Life Coolant -30C (-20F)
Padlocks (2 on ST, 3 on IT)

Configured as Follows

Ref #	Description	Price
4508450	420F2 HRC	$94,010
0P9002	LANE 2 ORDER	$0
4508730	STICK, EXTENDABLE, 14FT	$4,730
4508616	PT, 4WD, AUTOSHIFT	$13,070
4508757	ENGINE, 74.5KW,C4.4 ACERT, T4F	$6,930
4508533	HYDRAULICS, MP, 6FCN/8BNK, IT	$2,705
4470049	PRODUCT LINK, CELLULAR, PL641I	$0
4508683	CAB, DELUXE	$8,230
	CAB DELUXE INCLUDES	$0
	WINDOW DEFROSTER	$0
	FRONT/REAR WINDOW WIPER/WASH	$0
	INTERIOR REAR VIEW MIRROR	$0
	TILT/TELE STEERING COLUMN	$0
	FLOOR MAT	$0
	RADIO READY HEAD LINER	$0
	2 INTERNAL/EXTERNAL 12V POWE	$0
	AUTO UP STABILIZERS	$0
	END OF CAB DELUXE INCLUDES	$0
4916734	WORKLIGHTS (8) HALOGEN LAMPS	$0
4334806	SEAT, DELUXE FABRIC	$905
2061748	SEAT BELT, 3" SUSPENSION	$107
4508715	AIR CONDITIONER, T4	$2,400
3808961	TIRES, 12.5 80/19.5L-24, FS	$1,950
3379695	COUNTERWEIGHT, 530 LBS	$875
9R6007	STABILIZER PADS, FLIP-OVER	$329
2471950	BUCKET-HD, 24", 7.3 CFT PL	$1,810
5441901	COUPLER, PIN LOCK, BL F	$1,528
4309944	INSTRUCTIONS, ANSI	$0
4218926	SERIALIZED TECHNICAL MEDIA KIT	$0
3982681	RIDE CONTROL	$1,460
3982853	LINES, COMBINED AUX, E-STICK	$3,430
5402298	RADIO, FM BLUETOOTH	$540
4572797	BATTERY, HEAVY DUTY	$223
4237607	PLATE GROUP - BOOM WEAR	$212
3531389	GUARD, STABILIZER	$820
6W8832	CARRIAGE, FORK	$2,511
1956939	FORK TINE, 54" X 5" X 2" (2)	$1,586
2511794	BUCKET-GP, 1.5 YD3, IT	$4,242
9R5320	CUTTING EDGE, TWO PIECE,WIDE	$329
0P0210	PACK, DOMESTIC TRUCK	$0
4616839	SHIPPING/STORAGE PROTECTION	$199
4621033	RUST PREVENTATIVE APPLICATOR	$106
2825409	THUMB HYDRAULIC	$5,500
2214284	TINE THUMB	$417

Warranty

Standard Manufacturer's Warranty 12 months / unlimited hours

Pricing Summary

Caterpillar List Price:	$161,154.00
City of Tucson NIPA Contract #161534 Discount 22%:	(35,453.88)
Sub Total:	$125,700.12
Caterpillar BHL Seasonal Incentive 3% of List:	(4,834.62)
Net Total:	$120,865.50
Sales Tax 8.05%:	9,729.67
Total:	$130,595.17

*Includes delivery to Fountain Hills yard and extensive operator and safety training from one of our CAT certified instructors.

Availability: Unit reserved for two weeks for Town of Fountain that arrives January of 2019 (no obligation).

If you have any questions regarding this information please let me know. Thank you for allowing Empire Machinery to assist with your Caterpillar equipment needs.

Sincerely,

Doug Calvet
Account Manager
602-622-4917
Doug.Calvet@empire-cat.com

REQUEST FOR LEGAL SERVICES

Name/Phone Number/E-mail of Requestor: **Justin T. Weldy** **480-816-5133 jweldy@fh.az.gov**	**Date of Request:** 2/25/2019 **Date Director Approved Request:** 2/25/2019
Procurement Approval by: Craig Rudolphy 2/26/2019 **Yes** ☒ **No:** ☐ - Contact Finance Director	**Due Date (From Town Attorney's office):** 3/12/2019 • **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: 4/2/2019 Item **does no**t require Council approval ☐	

Request for Legal staff: Prepare cooperative purchasing agreement in the amount of $130,595.17 using the attached State of Arizona documents. This agreement is for the vehicle replacement purchase of a 2019 CAT 420F2 Backhoe.

Proposed Agenda Language (if applicable): Consent Agenda Item ☐ **Regular Agenda Item** ☒

CONSIDERATION of approving the purchase a 2019 Caterpillar 420F2 Backhoe to replace the current Backhoe that is twenty years old, utilizing the vehicle replacement fund.

Vendor/Consultant/Agreement/Agency Information:

Contact Name:	Doug Calvet
Entity Name:	Empire Southwest LLC
Entity Address:	1725 S Country Club Drive Mesa, AZ 85210
Entity Phone, Fax and E-mail address:	602-633-4917; 480-633-4626 (F); rena.mcdonald@empire-cat.com
Town of Fountain Hills Business License Number:	N/A
Arizona Corporation Commission File Number:	R08238673

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 2019-073
- ☐ Other _____

Required Contract/Agreement Information:

Method of Vendor Selection: National Joint Powers Alliance (Sourcewell) Coop

Term of Contract/Agreement: May 19, 2020

Contract Amount (this contract): $130,595.17 Cumulative Contract Amount: $130,595.17

Brief description of services/goods being sought: Vehicle Replacment Purchase of a 2019 CAT 420F2 Backhoe

Contract # assigned: C2019-073

Funding Source: VRAD Project No. _____

Budget Transfer Required: _____; if yes, attach appropriate documentation

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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

Finance **requires** a "contract cover sheet" prior to processing the approved/signed contract/agreement for payment(s).

CONTRACT/GRANT INFORMATION SHEET - NEW CONTRACT

Date: 2/21/2019			
Staff's Name: Justin T. Weldy	Department: Public Works		
Vendor's Name: Empire Southwest LLC		Vendor Number:	246
Address: 1725 S Country Club Drive Mesa, AZ 85210			
Phone: 602-633-4917			
Received W9: ☒ Y ☐ N ☐ ALREADY IN SYSTEM			
Business License #: Pending	Exp. Date:		

ACCOUNTING SUMMARY	Org	Object	Project/#	$
Accounting Code:				
Accounting Code:				
Accounting Code:				
TBD(used for variety of different things/departments/funds):	Various	6408		

CONTRACT SUMMARY

Contract Number Assigned:	**C2019-073**				
Current Contract Total:	130,59517	Total Contract Amount with Renewals:			
Brief Description of Service:	Equipment Purchase				
If Renewable:		Total # of Renewals Max:	0		
FY Cumulative Vendor Totals:	Does this Contract put it over $50,000	☒ Yes	☒ No		
Contract Beginning Date:	4/2/2019				
Contract Expiration Date:	4/2/2020				
Budgeted Expenditure:	☒ Yes	☒ No			
Budget Page #:	The FY 19-20 budget book not net published				
Approved by Council:	☒ Yes; Date: April 02-, 2019	☐ No	☐ N/A		
Insurance Certificate provided:	☐ Yes	☒ No	☐ N/A		
Warranty Period:	☒ Yes	☐ No	If Yes, expires 48 months		
Estimated Start Date:	4/2/2019				
Estimated Completion Date:	4/2/2020				

GRANT SUMMARY

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

ITEM 7-D

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019

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 citizens wishing to sponsor a Christmas Tree on the Avenue of the Fountains in honor of first responders.

Applicant: N/A

Applicant Contact Information: N/A

Owner: N/A

Owner Contact Information: N/A

Property Location: Avenue of the Fountains Park

Related Ordinance, Policy or Guiding Principle: N/A

Staff Summary (background): Two years ago the Town included for the first time a fifteen foot Christmas tree in the Sharon Morgan Plaza located at Avenue of the Fountains and Saguaro. Since that time the tree has become very popular with visitors and families who like to have their photographs taken by the tree with the fountain in the background.

Recently, Lina Bellenir and Bob Scarpetti approached Community Services Director Rachael Goodwin and me about the concept of a Christmas tree on Avenue of the Fountains in honor of first responders. Their idea would be to have a similar tree located at Avenue of the Fountains and Verde River on the east or west facing plaza area. The tree would have decorations on it to symbolize and recognize first responders such as police, fire, emergency medical, and other personnel who engage in public safety activities for the protection of the community, region, and country.

The annual cost for the holiday decorations on the Avenue of the Fountains is approximately $35,000. Since there is no additional funding in the FY 2019-20 budget for this purpose, the Community Services Director and I explained that it would likely be necessary for Ms. Bellenir and Mr. Scarpetti to fundraise for the $8,000 to offset the cost of the Christmas tree, if the Town Council approved of the idea. The annual $8,000 includes the cost of delivery, set up, decorating, and removing the tree following the holiday season.

Due to the need to have this decision made very soon in order to reserve another Christmas Tree in time for the holiday season and for Ms. Bellenir and Mr. Scarpetti to have sufficient time to fundraise for the project, it was necessary to bring this item before the Town Council at this time.

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

Fiscal Impact (initial and ongoing costs; budget status): Annually, $8,000

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

Staff Recommendation(s): That the Town Council provide direction in approving or denying the request for the Christmas Tree honoring First Responders.

List Attachment(s): N/A

SUGGESTED MOTION (for Council use): Move to approve (or deny) a request for a Christmas Tree to be located in the plaza area on Avenue of the Fountains near Verde River for the purpose of honoring First Responders; and if approved, direct the requestors to fundraise for the Christmas Tree and coordinate the project with Town staff.

Prepared by:

NA Date

Director's Approval:

NA Date

Approved:

Grady E. Miller

Grady E. Miller, Town Manager 3/25/2019

ITEM 7-E

TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/2/2019 **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:

Elizabeth A. Burke, Town Clerk 3/21/2019

Approved:

Grady E. Miller, Town Manager 3/21/2019