



**AMENDED AGENDA**  
**Queen Creek Town Council Regular Session**  
Community Chambers, 20727 E. Civic Parkway  
February 16, 2022  
6:30 PM

*Pursuant to A.R.S. §§ 38-431.02 and 38-431.03, notice is hereby given to the members of the Town Council and the general public that, at this Regular Meeting, the Town Council may vote at any time during the Council Meeting to go into Executive Session, which will not be open to the public, for legal advice and discussion with the Town Attorney(s) for legal advice on any item listed on the following agenda, pursuant to A.R.S. § 38-431.03(A)(3).*

*The public can continue to watch the meeting live streamed at [QueenCreek.org/WatchMeetings](https://www.queen-creek.org/WatchMeetings) by selecting "video" next to the applicable meeting (once the meeting begins) or by visiting the Town's Ustream account at <https://video.ibm.com/councilmeeting>.*

*Public comment: In addition to attending in-person, there are two options for residents to submit public comment for the February 16th Town Council meeting:*

- *Email: Submit a comment to [PublicComment@QueenCreekAZ.gov](mailto:PublicComment@QueenCreekAZ.gov). Every email received will be entered into the official record. Please include your name, address, comment and note if your comment is for call to the public.*
- *WebEx Online Meeting: Using a computer, tablet or smartphone, log into the meeting through WebEx (LINK) and provide a public comment. To participate, register with your name, address and comment. View detailed at [QueenCreek.org/WatchMeetings](https://www.queen-creek.org/WatchMeetings).*

*Comments without identifying name and address will not be read or submitted as part of the written record.*

*The Mayor or other presiding officer at the meeting may change the order of Agenda Items and/or take items on the Agenda in an order they determine is appropriate. Some members of the Town Council and staff may attend electronically.*

- 1. Call to Order:**
- 2. Roll Call:** (Members of the Town Council may attend electronically and/or telephonically)
- 3. Pledge of Allegiance:**
- 4. Invocation/Moment of Silence:**
- 5. Ceremonial Matters:** (Presentations, Proclamations, Awards, Guest Introductions and Announcements)
  - A. Recognition of Police Professional Staff

**6. Committee Reports:**

A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summery unless the specific matter is properly noticed for legal action.

B. Committee and outside agency reports (only as scheduled)

1. Transportation Advisory Committee Report (February 4, 2022)

**7. Public Comments:** *Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please address the Town Council by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to [PublicComment@queencreek.org](mailto:PublicComment@queencreek.org) by 6:30 p.m. on February 16, 2022 (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record). The Town Council may not discuss or take action on any issue raised during public comment until a later meeting. Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

**8. Consent Agenda:** *Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Members of the Town Council and/or staff may comment on any item without removing it from the Consent Agenda or remove any item for separate discussion and consideration.*

A. Consideration and possible approval of the February 2, 2022 Regular Session minutes. – *New Item*

B. Consideration and possible approval of Expenditures over \$25,000. (FY 21/22 Budgeted Items)

1. Mallard Creek, Queen Horse Bedding and Winners Circle – Wood Shavings for Horse Bedding: \$200,000 (HPEC)

2. FX Tactical, Universal Police Supply – Police Uniforms/Ballistic Vests/Other Equipment: \$120,000 (Police)

C. Consideration and possible approval of the appointment of Aric Bopp and Nate Knight and the reappointment of Perry Berry, Nancy Hormann, Shane Randall, Grant Tayrien, Marc Valenzuela and Brent White to the Economic Development Commission.

D. Consideration and possible approval of an Intergovernmental Agreement between the Flood Control District of Maricopa County and The Town of Queen Creek for the acquisition of real property at the southwest corner of Ellsworth Road and the Queen Creek Road alignment in an amount not to exceed \$500. (FY 22 Budgeted Item)

E. Consideration and possible approval of an Intergovernmental Agreement between Pinal County and the Town of Queen Creek for the construction of a traffic signal at the intersection of Gary Road and Grange Parkway in an amount estimated at \$650,000, and the necessary budget adjustments. (This is not a FY 22 Budgeted Item)

- F. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Construction Management Services with up to four possible one-year renewals with Consultant Engineering, Inc.; Civil Solutions Engineering & Management, LLC; Entellus, Inc. Kimley-Horn and Associates, Inc.; Ritock-Powell & Associates; and Tristar Engineering & Management, Inc.
  - G. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Geotechnical Engineering Services with up to four possible one-year renewals, with ACS Services, LLC; ATEK Engineering Consultants, LLC; Ninyo & Moore Geotechnical and Environmental Sciences Consultants; Speedie & Associates, Inc.
  - H. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Roadway Improvement Projects with up to four possible one-year renewals, with EPS Group, Inc.; Kimley-Horn and Associates; Ritoch-Powell and Associates; Stanley Consulting; Stantec; and TY Lin International.
  - I. Consideration and possible approval of a one-year On-Call Professional Services contract for Traffic Engineering Services, with up to four possible one-year renewals, with EPS Group, Inc.; Kimley-Horn and Associates; Lee Engineering; Wood Environment & Infrastructure Solutions, Inc.; Y2K Engineering, LLC.
  - J. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Transportation Planning Services with up to four possible one-year renewals, with Burgess & Niple; Kimley-Horn and Associates; Michael Baker International; and Wood Environment & Infrastructure Solutions, Inc.
  - K. Consideration and possible approval of Delegation Resolution #1443-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to the investigation and design of the Rittenhouse and Union Pacific Rail Road (UPRR) sanitary sewer crossing remediation project in an amount not to exceed \$200,000, and the necessary budget adjustments. (This is not a FY 22 budgeted item). – **New Item**
  - L. Consideration and possible approval of Ordinance 781-22 amending the Queen Creek Town Code Chapter 2 Mayor and Council, Article 2-6 Ordinances, Resolutions and Contracts, Section 2-6-8 Posting Required, to establish one physical posting location for public notice of ordinances imposing a penalty, fine, forfeiture, or other punishment.
9. **Public Hearing Consent Agenda:** *Matters listed under the Public Hearing Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Please address the Town Council on any items on the Public Hearing Consent Agenda by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to [PublicComment@queencreek.org](mailto:PublicComment@queencreek.org) (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at [QueenCreek.org/WatchMeetings](http://QueenCreek.org/WatchMeetings)). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*
- A. None.

**10. Public Hearings:** *If you wish to speak to the Town Council on any of the items listed as a Public Hearing, please address the Town Council by sending an email to [PublicComment@queencreek.org](mailto:PublicComment@queencreek.org) (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at [QueenCreek.org/WatchMeetings](http://QueenCreek.org/WatchMeetings)). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

A. None.

**11. Items for Discussion:** *These items are for Town Council discussion only and no action will be taken. In general, no public comment will be taken.*

A. Presentation - Small Area Transportation Study

B. Overview of the American Rescue Plan Act (ARPA) Funding.

C. Comprehensive classification, compensation and performance management update.

**12. Final Action:** *If you wish to speak to the Town Council on any of the items listed under Final Action Please address the Town Council by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to [PublicComment@queencreek.org](mailto:PublicComment@queencreek.org) (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at [QueenCreek.org/WatchMeetings](http://QueenCreek.org/WatchMeetings)). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

**13. Adjournment:**

Pursuant to ARS 38-431.02 notice is hereby given to the members of the Queen Creek Town Council and to general public that the Queen Creek Town Council will hold a meeting open to the public as set forth above.

I, Maria Gonzalez, do hereby certify that I caused to be posted the Agenda for the February 16, 2022 Regular and Possible Executive Session of the Queen Creek Town Council at Town Hall and on the Town's website at [www.QueenCreekAz.gov](http://www.QueenCreekAz.gov).

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Maria E. Gonzalez, CMC  
Town Clerk

The Town of Queen Creek encourages the participation of disabled individuals in the services, activities, and programs provided by the Town. Individuals with disabilities who require reasonable accommodations in order to participate should contact the Town Clerk's office at (480) 358-3000.



TOWN OF  
**QUEEN CREEK**  
ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL  
**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER  
**FROM:** MARIA GONZALEZ CMC, TOWN CLERK  
**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF THE FEBRUARY 2, 2022 REGULAR SESSION MINUTES.  
**DATE:** February 16, 2022

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**Suggested Action:**

To approve the draft minutes as presented.

**Alternatives:**

Council can request revisions to be made to the draft minutes and approve with revisions or continue to a future meeting.

**Attachment(s):**

1. [Draft Minutes 02-02-22.pdf](#)



**Minutes**  
**Town Council Regular Session**  
Community Chambers, 20727 E. Civic Parkway  
Wednesday, February 2, 2022  
6:30 PM

**1) Call to Order:**

The meeting was called to order by Vice Mayor Brown at 6:30 PM.

**2) Roll Call:**

**PRESENT:**

Gail Barney, Mayor  
Jeff Brown, Vice Mayor (Chair)  
Robin Benning, Council Member  
Leah Martineau, Council Member  
Dawn Oliphant, Council Member  
Emilena Turley, Council Member  
Julia Wheatley, Council Member

*Mayor Barney joined via WebEx.*

**3) Pledge of Allegiance:**

Vice Mayor Brown led the Pledge of Allegiance.

**4) Invocation/Moment of Silence:**

**5) Ceremonial Matters (Presentations, Proclamations, Awards, Guest Introductions and Announcements):**

5.A) Proclamation: Black History Month

Vice Mayor Brown read the Proclamation for Black History Month.

5.B) Proclamation: Go Red for Women Month

Council Member Oliphant read the Proclamation and presented it to Ms. Stacy Johnson, Ambassador for Go Red for Women.

**6) Committee Reports:**

6.A) Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

See attached.

6.B) Committee and outside agency reports (only as scheduled).

None.

7) **Public Comments:**

None.

8) **Consent Agenda:**

8.A) Consideration and possible approval of the January 19, 2022 Regular Session minutes.

**Department:** Town Clerk's Office


Staff Report 

Draft Minutes 01-19-22 

8.B) Consideration and possible approval of the "Final Plat" for Empire Pointe Parcel 9, a request by Mattamy Arizona LLC.

**Department:** Development Services

Staff Report 

Aerial Exhibit - Empire Pointe.pdf 


Final Plat - Empire Pointe Parcel 9.pdf 


Item 8(C) was removed by Council Member Turley for a separate vote.

8.D) Consideration and possible approval of Resolution 1439-22 adopting the Maricopa County Multi-Jurisdictional Hazard Mitigation Plan 2021 (the "2021 plan") and authorizing the appropriate Town officials and staff to take any and all actions necessary to implement, monitor, and maintain the 2021 plan.

**Department:** Fire & Medical

Staff Report 

Jurisdictional Summary\_Queen Creek\_2021.pdf 


Resolution 1439-22 

8.E) Consideration and possible approval of Resolution 1441-22 adopting revisions to the Council Policies and Procedures Handbook, including the establishment of one physical posting location for all public notices for the Town of Queen Creek.

**Department:** Town Clerk's Office

Staff Report 

Council Policies & Procedures\_Redline.pdf 

Resolution No. 1441-22.docx 


**MOTION:** To approve the Consent Agenda, minus Item 8(C).  
**RESULT:** Approved unanimously (7-0)  
**MOVER:** Julia Wheatley, Council Member  
**SECONDER:** Robin Benning, Council Member  
**AYES:** Gail Barney, Mayor, Jeff Brown, Vice Mayor (Chair), Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Council Member

8.C) Consideration and possible approval of a Professional Services Contract with J2 Engineering & Environmental Design for the Mansel Carter Oasis Park Phase 2 project engineering, architectural and landscape architectural design (CIP Project No. P0615) in an amount not to exceed \$443,374. (This is an FY 22 budgeted item).

**Department:** Capital Improvement Projects

Staff Report 

Location Site Map 


J2 Mansel Park Phase 2 Contract 

**MOTION:** To approve a Professional Services Contract with J2 Engineering & Environmental Design for the Mansel Carter Oasis Park Phase 2 project engineering, architectural and landscape architectural design (CIP Project No. P0615) in an amount not to exceed \$443,374.  
**RESULT:** Approved (5-2)  
**MOVER:** Robin Benning, Council Member  
**SECONDER:** Julia Wheatley, Council Member  
**AYES:** Gail Barney, Mayor, Jeff Brown, Vice Mayor (Chair), Robin Benning, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Council Member  
**NAYS:** Leah Martineau, Council Member, Emilena Turley, Council Member


9) **Public Hearing Consent Agenda:**

9.A) Consideration and possible approval of a Class "A" Bingo License Application from Ovation at Meridian Community Association.

**Department:** Town Clerk's Office

Staff Report 

Bingo Application Ovation Redacted.pdf 


QCPD Report - Ovation 


9.B) Consideration and possible recommendation of approval on a new Series 9 Liquor Store license application submitted by Michael Joseph Basha on behalf of Bashas #46 located at 23760 S Power Road, Queen Creek.

**Department:** Town Clerk's Office



Staff Report 

Local Governing Body Report 

QCPD Report - Bashas 

Vice Mayor Brown opened the public hearing. A public comment card was submitted by Mr. Caldwell in favor of Item 9(B). There were no other comments. Vice Mayor Brown closed the public hearing.

**MOTION:** To approve the Public Hearing Consent Agenda.  
**RESULT:** Approved unanimously (7-0)  
**MOVER:** Emilena Turley, Council Member  
**SECONDER:** Julia Wheatley, Council Member  
**AYES:** Gail Barney, Mayor, Jeff Brown, Vice Mayor (Chair), Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Council Member

**10) Public Hearings:**

None.

**11) Items for Discussion:**

None.

**12) Final Action:**

12.A) Consideration and review of the updated population growth and revenue projections and approval of related FY 2021-22 revenue budget amendments totaling \$22,960,182.

**Department:** Finance

Staff Report 

Presentation on Updated Population Growth and Revenue Projections 

Attachment A.JPG 

Attachment B.JPG 

**MOTION:** To approve the FY 2021-22 revenue budget amendments totaling \$22,960,182.  
**RESULT:** Approved unanimously (7-0)  
**MOVER:** Robin Benning, Council Member  
**SECONDER:** Julia Wheatley, Council Member  
**AYES:** Gail Barney, Mayor, Jeff Brown, Vice Mayor (Chair), Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Council Member

Finance Director Scott McCarty presented information on growth projections for Queen Creek in regards to population and residential and non-residential development and the impact on revenue projections. Mr. McCarty said staff used the projections to recommend an adjustment to the Town's five-year Operating Budget revenue totaling \$22,960,182.

Council commented that the adjustment was about revenues and not expenses and Mr. McCarty clarified that regardless of how we adjust revenues we cannot increase spending and must adhere to the recommended budget.

**13) Adjournment:**

The meeting adjourned at 7:12 p.m.

ATTEST:

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Maria E. Gonzalez, Town Clerk  
TOWN OF QUEEN CREEK

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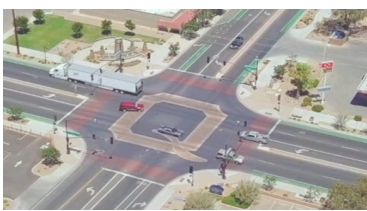
Gail Barney, Mayor

I, Maria E. Gonzalez, do hereby certify that to the best of my knowledge and belief, the foregoing Minutes are a true and correct copy of the Town Council Regular Session Minutes of the February 2, 2022 Town Council Regular Session of the Queen Creek Town Council. I further certify that the meeting was duly called and that a quorum was present.

Passed and approved on: \_\_\_\_\_

# Council Committee Reports

- 01/20 – Queen Creek Police Department Ride Along (Brown)
- 01/20 – Valley Metro Board Meeting/Executive Session (Brown)
- 01/20 – Pinal Regional Transportation Authority Board of Directors Meeting (Benning)
- 01/22 – Queen Creek Police Department Ride Along (Barney)
- 01/25 – Meeting with State Representative Neal Carter (Barney)
- 01/25 – Citizen Leadership Institute Session 1 | Orientation (Barney, Benning, Wheatley)
- 01/26 – Maricopa Association of Governments Regional Council Meeting (Barney)
- 01/26 – Central Arizona Governments Regional Council Meeting (Benning)
- 01/27 – Tri-County Economic Development Update (Oliphant)
- 01/28 – National School Choice Week Flag Ceremony and Classroom Visits | Benjamin Franklin Charter School, Crismon Campus (Barney)
- 01/28 – Annual Queen Creek Future Farmers of America Barbecue (Barney)
- 02/01 – Maricopa Association of Governments Economic Development Committee (Oliphant)
- 02/02 – Arizona State Legislature House Transportation Committee (Barney)





TOWN OF  
**QUEEN CREEK**  
ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL  
**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER  
**FROM:** MELISSA BAUER, PROCUREMENT MANAGER  
**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF EXPENDITURES OVER \$25,000.  
(FY 21/22 BUDGETED ITEMS)  
**DATE:** February 16, 2022

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**Suggested Action:**

Staff recommends approval of Expenditures \$25,000 and over.

**Discussion:**

The following items being request are:

1. Mallard Creek, Queen Horse Bedding and Winners Circle - Wood Shavings for Horse Bedding:  
\$200,000 (HPEC)
2. FX Tactical, Universal Police Supply - Police Uniforms/Ballistic Vests/Other Equipment:  
\$120,000 (Police)

**Fiscal Impact:**

The fiscal impact of the requested spending authority for the above expenditures is \$320,000. Funds have been identified within the line item budget as approved in the FY22 budget or subsequently approved by Council.

**Attachment(s):**

1. [February 16, 2022 Expenditures over \\$25k.pdf](#)

**Attachment: Expenditures \$25,000 and Over  
Budgeted in Fiscal Year 21/22  
February 16, 2022**

<b>Item #</b>	<b>Vendor(s)</b>	<b>Description</b>	<b>Purpose</b>	<b>Requesting Dept(s)</b>	<b>Fiscal Impact \$</b>	<b>Procurement Method</b>	<b>Alternative</b>
<b>1</b>	Mallard Creek, Queen Horse Bedding and Winners Circle	Wood Shavings for Horse Bedding	Additional cumulative contract spending authority for as-needed wood shavings for horse bedding at HPEC. Council previously approved for FY 22 on 7/21/21, \$150K. We need an additional \$50K for a new total of \$200K (FY 21-22 budgeted item)	HPEC	\$200,000	2021-066, 2021-067 & 2021-068	Council can choose not to award the increased spending authority for the bedding/shaving contracts at this time. This will cause staff to obtain quotes from vendors on an as-needed basis in order to comply with the Town purchasing policies. This results additional staff time to acquire the needed materials for the events at HPEC, possible unfavorable pricing, and delayed deliveries.
<b>2</b>	FX Tactical/ Universal Police Supply	Police Uniforms/Ballistic Vests/Other equipment	Additional cumulative spending authority for the purchase of Police uniforms, ballistic vests, and other equipment for Police staff (FY 21-22 budgeted item)	Police	\$120,000	City of Glendale #21-08 & Pinal County #190424 Cooperative Contracts	Council could choose not to approve this expenditure requiring staff to go through the formal solicitation process. The Town receives contract pricing and would not be guaranteed better pricing if a new contract were solicited.



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** DOREEN COTT, ECONOMIC DEVELOPMENT DIRECTOR

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF THE APPOINTMENT OF ARIC BOPP AND NATE KNIGHT AND THE REAPPOINTMENT OF PERRY BERRY, NANCY HORMANN, SHANE RANDALL, GRANT TAYRIEN, MARC VALENZUELA AND BRENT WHITE TO THE ECONOMIC DEVELOPMENT COMMISSION.

**DATE:** February 16, 2022

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**Suggested Action:**

To appoint Aric Bopp and Nate Knight and reappoint Perry Berry, Nancy Hormann, Shane Randall, Grant Tayrien, Marc Valenzuela and Brent White to the Economic Development Commission.

**Discussion:**

On October 15, 2014, the Town Council approved Resolution 1022-14 amending the By-laws for the Economic Development Commission specific to the minimum and maximum number of committee members, Commission membership “designated seats” and liaison members.

**Article IV: Section 1:** Number - The Commission shall consist of at least eleven (11) persons, and shall not exceed nineteen (19) persons. All members of the Commission shall be residents of the State of Arizona. Non-voting members will not be counted towards the minimum or maximum committee membership.

**Section 2:** Composition – Members of the Commission selected from the private and public sector, with exception of the Ex-Officio and Liaison Members, shall be classified as “non-designated” (voting members).

Liaison Member (non-voting)

- Planning & Zoning Commission Member
- Queen Creek’s Board Representative from the Greater Phoenix Economic Council

Council Members Emilena Turley and Julia Wheatley currently serve as the Town Council Ex-Officio Members (non-voting).

If appointed, Aric Bopp will serve as a voting member and designated seat from Arizona State University replacing long time EDC member Warde Nichols; Nate Knight is a resident and QC small business owner and will serve as an at-large voting member.

If reappointed Perry Berry will serve as a voting member and designated seat from the Queen Creek Unified School District; Marc Valenzuela will serve as a voting member and designated seat from Salt River Project; Brent White will serve as a voting member and designated seat from Phoenix-Mesa Gateway Airport; Nancy Hormann, Shane Randall, and Grant Tayrien will continue serving as at-large voting members.

It is the Mayor's recommendation to appoint Aric Bopp and Nate Knight and reappoint Perry Berry, Nancy Hormann, Shane Randall, Grant Tayrien, Marc Valenzuela and Brent White to the Economic Development Commission. Staff supports the appointments of the individuals based on their interest in serving the community and their commitment to furthering the economic development initiatives of Queen Creek. If approved, the Commission will have 16 voting members.

**Fiscal Impact:**

There is no fiscal impact associated with making reappointments to the Economic Development Commission.

**Alternatives:**

The Town Council could choose not to reappoint the recommended individuals and request that staff present alternative appointments at the next Town Council meeting.

**Attachment(s):**

1. [Updated Notice of Interest forms for the recommended appointments and reappointments](#)
2. [Copy of the bylaws for the Economic Development Commission](#)

Submitter DB ID 40608  
IP Address 2600:8800:240b:3b00:1863:af06:c18f:59e0  
Submission Recorded On 02/03/2022 9:34 am  
Time to Take the Survey 6 minutes, 40 secs.

**Page 1**

**The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.**

**Appointments are made by approval of the Town Council. If you would like to be considered for an appointment, complete this form, attach a resume or letter about yourself and return all documents to:**

**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

02/03/2022

**2. Name**

**First** Aric

**Middle** Henderson

**Last** Bopp

**3. Home Address**

3276 E Linda Lane, Gilbert, AZ 85234

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Economic Development

**6. Phone**

**Home Phone** (480) 606-2006

**Work Phone** (480) 606-2006

**Best time to call (a.m. or p.m.)** Either

**Fax number** Not answered

**7. Email Address**

aric.bopp@asu.edu

**8. How long have you been a resident of Queen Creek?**

0

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**No**



**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

Member of the AZ Tech Council Board of Directors

Member of City of Chandler Economic Development Advisory Board

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** Not answered

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** Not answered

**Parks and Recreation Advisory Board** Not answered

**Planning and Zoning Commission** Not answered

**Transportation Advisory Committee** Not answered

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

Working for ASU and with my experience in economic development I feel like I would be a valuable member of the Queen Creek Economic Development Board.

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

Certified Economic Developer (CEcD)

20+ years experience in the industry

10+ years of rural economic development

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

Little League (Coach baseball and softball)

Wham (Coach basketball)

**18. Are you available for evening meetings?**

Yes

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Not answered

**22. Resume**

[Aric H. Bopp Resume Current.pdf](#)

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

**23. Signature**

Aric H. Bopp

This question is marked as sensitive.

Submitter DB ID 40439  
IP Address 70.184.115.52  
Submission Recorded On 01/21/2022 7:41 am  
Time to Take the Survey 23 minutes, 32 secs.

**Page 1**

**The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.**

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**Town of Queen Creek**  
**Town Clerk's Office**  
**22350 S. Ellsworth Road**  
**Queen Creek, AZ 85142**  
**Fax: 480-358-3001**

**1. Date**

01/21/2022

**2. Name**

**First** Nate

**Middle** Not answered

**Last** Knight

**3. Home Address**

23055 E. Sonoqui Blvd

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Real Estate Agent/Office Manager

**6. Phone**

**Home Phone** (480) 745-5139

**Work Phone** (480) 745-5139

**Best time to call (a.m. or p.m.)** Anytime

**Fax number** Not answered

**7. Email Address**

nate@prosmartrealty.com

**8. How long have you been a resident of Queen Creek?**

Since 2012

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**Yes**

**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

Not answered

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** Not answered

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** Queen Creek

**Parks and Recreation Advisory Board** Not answered

**Planning and Zoning Commission** Not answered

**Transportation Advisory Committee** Not answered

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

I have been a resident of Queen Creek since 2012 but my families heritage goes far beyond that. My family has been in Queen Creek since the 1940's and we have watched this Town grow into in my opinion, one of the most exciting areas to live in Arizona and even in the entire country. Contributing to this Town and carryin on my families legacy is important to me and it is extremely important the Town continues in the positive trajectory and I would love to help in that. I recently purchased an office building on Old Ellsworth (22027 S. Ellsworth Rd) and have remodeled the interior and exterior and opened my own Real Estate office. Being in the historic downtown is a true blessing and I love being a part of something great - especially the development and upward trajectory of this town. I love to give back and one of my biggest 'love languages' is giving back in anyway I can. This opportunity would be a true blessing and I know I would be an asset to the Economic Development Commission.

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

Working in Real Estate, one of the traits that makes you a successful agent is knowledge of a specific area. Living in Queen Creek for 10+ years, opening my office in Downtown Queen Creek and having a deep passion for this Town are all things that set me apart from the rest. Furthermore, I am constantly staying up to date on the development, road improvements and building projects in the Town because it is extremely important for me to be a resource of information to my clients who are wanting to move to the Queen Creek area (which there are a lot now). It is very exciting! I love the development of this Town and I love the direction we are going in!

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

I am currently a member of the Queen Creek Chamber of Commerce. I joined the Chamber when I closed on my office in Downtown Queen Creek. I am not a member of any formal community organizations but I love organizing and putting on community events in my neighborhood. In the past we have done multiple holiday events with 400+ neighbors attending and also doing fundraisers to raise money for non profit organizations which have included doing a 'Polar Plunge' to raise money for "The Ronald McDonald House" and also to raise money for the "100 Club Of Arizona" which is also a non profit who supports public safety to families who are in need or for families who have lost a loved one in the line of duty. Aside from the fundraisers and community events I have organized, I have donated to multiple local schools to include the Queen Creek High School basketball team and baseball team. Again, giving back, helping others and being good to people is my 'love language', My "motto" I live by everyday is "Work Hard and Be Good To People"!

**18. Are you available for evening meetings?**

Yes

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Not answered

**22. Resume**

**I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.**

**Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.**

**23. Signature**

Nate Knight

This question is marked as sensitive.

Submitter DB ID 40575  
IP Address 184.179.24.162  
Submission Recorded On 02/01/2022 7:58 am  
Time to Take the Survey 9 minutes, 23 secs.

**Page 1**

**The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.**

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**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

02/01/2022

**2. Name**

**First** Perry

**Middle** Not answered

**Last** Berry

**3. Home Address**

20135 E Camina Buena Vista Queen Creek AZ 84142

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Superintendent, QCUUSD

**6. Phone**

**Home Phone** (928) 660-0688

**Work Phone** (480) 987-5938

**Best time to call (a.m. or p.m.)** Not answered

**Fax number** Not answered

**7. Email Address**

pberry@qcusd.org

**8. How long have you been a resident of Queen Creek?**

10 yrs

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**Yes**

**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

Economic Development Commission (QC)

Mesa Economic Education Workforce

Mayor & Superintendent Roundtable (City of Mesa)

AZ Desert Cancer Foundation

Junior Achievement

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** 5

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** 2

**Parks and Recreation Advisory Board** 4

**Planning and Zoning Commission** 3

**Transportation Advisory Committee** 6

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

I am interested in serving on a committee that works toward economic health and a high standard of living within Queen Creek.

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

I currently hold the position of Superintendent for QCUSD. I have a MA EdD in Organizational Leadership. I have extensive experience coordinating projects, developing systems and improving teams.

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

QC Chamber of Commerce, EV Hispanic Chamber of Commerce, AZ Schools Superintendent Association, AZ School Board Association, Junior Achievement, Mesa Educational Workforce Committee, ASCD, ASA

**18. Are you available for evening meetings?**

Yes

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Wednesday

**22. Resume**

[Perry Berry Resume.pdf](#)

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

**23. Signature**

This question is marked as sensitive.

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Submitter DB ID 40468  
IP Address 70.175.19.231  
Submission Recorded On 01/24/2022 2:43 pm  
Time to Take the Survey 14 minutes, 34 secs.

**Page 1**

**The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.**

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**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

01/24/2022

**2. Name**

**First** Nancy

**Middle** L

**Last** Hormann

**3. Home Address**

36046 N Stoneware Dr

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Executive Director

**6. Phone**

**Home Phone** (480) 626-0226

**Work Phone** (480) 534-7985 ext. 105

**Best time to call (a.m. or p.m.)** anytime

**Fax number** Not answered

**7. Email Address**

nancy@hormann.net

**8. How long have you been a resident of Queen Creek?**

3 Years

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**Yes**

**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

CVB - Dallas & San Francisco

Economic Development Council - Dallas

International Downtown Association - Board Member

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** Not answered

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** 2

**Parks and Recreation Advisory Board** Not answered

**Planning and Zoning Commission** Not answered

**Transportation Advisory Committee** Not answered

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

Economic Development is part of my job and I feel I could contribute some insight

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

In the last 32 years I have run downtown organizations, providing

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

**18. Are you available for evening meetings?**

Yes

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Wednesday

**22. Resume**

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

**23. Signature**

Nancy Hormann

This question is marked as sensitive.

Submitter DB ID 40423  
IP Address 96.3.212.115  
Submission Recorded On 01/20/2022 9:50 am  
Time to Take the Survey 6 minutes, 5 secs.

**Page 1**

**The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.**

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**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

01/20/2022

**2. Name**

**First** Shane

**Middle** I

**Last** Randall

**3. Home Address**

19735 E. Sonoqui Blvd. Queen Creek, AZ 85142

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Commercial Banker

**6. Phone**

**Home Phone** (480) 279-1780

**Work Phone** (480) 296-1733

**Best time to call (a.m. or p.m.)** PM

**Fax number** Not answered

**7. Email Address**

shane.randall@westernbanks.com

**8. How long have you been a resident of Queen Creek?**

15 yers

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**Yes**

11. Have you participated in the Queen Creek Citizen Leadership Institute?

No

12. If yes, did you graduate?

No

13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

Economic Development for the past 10-years

14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

Board of Adjustment Not answered

Economic Development Commission 1

Downtown Arts & Placemaking Advisory Committee Not answered

Parks and Recreation Advisory Board Not answered

Planning and Zoning Commission Not answered

Transportation Advisory Committee Not answered

15. Please describe why you would like to serve on this board, committee, commission, etc.

I have enjoyed my time serving on this committee and would like to continue in that service.

16. Please describe special knowledge or expertise you have that would benefit the Town.

Banking, Development, Finance, etc.

17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

Not answered

18. Are you available for evening meetings?

Yes

19. Are you available for morning meetings?

Yes

20. Are you available for lunch meetings?

Yes

21. Are there days of the week you are not available for meetings? (Check all that apply)

Monday

Tuesday

Wednesday

Thursday

Friday

22. Resume

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

23. Signature

Shane Randall

This question is marked as sensitive.

Submitter DB ID 40576  
IP Address 98.167.211.20  
Submission Recorded On 02/01/2022 9:48 am  
Time to Take the Survey 12 minutes, 23 secs.

**Page 1**

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**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

02/01/2022

**2. Name**

**First** Grant

**Middle** Allen

**Last** Tayrien

**3. Home Address**

20412 E. Colt Drive

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Real Estate Investor/Developer

**6. Phone**

**Home Phone** (480) 907-8988

**Work Phone** Not answered

**Best time to call (a.m. or p.m.)** Not answered

**Fax number** Not answered

**7. Email Address**

gatayrien@gmail.com

**8. How long have you been a resident of Queen Creek?**

19 years

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**Yes**

**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

Graduate of Mesa Leadership Institute, Past Chairman of Mesa Housing and Human Resources Advisory Board. Current Co-Chair of the Queen Creek Economic Development Commission.

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** 5

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** 6

**Parks and Recreation Advisory Board** 4

**Planning and Zoning Commission** 2

**Transportation Advisory Committee** 3

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

Enjoy being a part of the community effort to make QC a great place to live.

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

Past Director of Development for ASU and a subsidiary of Allegiant Air, and a Senior Asset Manager for JPMorgan Chase. Extensive Real Estate Investment and Development experience.

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

Licensed Real Estate Broker in Arizona, Certified Toastmaster (CTM), Chartered Organization Leader for Boy Scouts of America. Member of Urban Land Institute (ULI), Graduate of The Mesa Leadership Program, Former Chairman of the Mesa Housing and Human Services Advisory Board, Past Member of the International Council of Shopping Centers (ICSC) and Mesa Baseline Rotary Club, Past President of five Homeowner and Building Owner Associations. Current Co-Chairman of the Queen Creek Economic Development Commission and member of the Southeast Mesa Economic Resource Forum (SMERF), Past Maricopa Community College Instructor in Business Statistics. Current Adjunct Faculty at Grand Canyon University in Business Finance.

**18. Are you available for evening meetings?**

Yes

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Tuesday

**22. Resume**

[Grant Tayrien Resume 2022.docx](#)

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

**Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.**

**23. Signature**



This question is marked as sensitive.

---

Submitter DB ID 40581  
IP Address 148.126.10.202  
Submission Recorded On 02/01/2022 12:14 pm  
Time to Take the Survey 30 minutes, 4 secs.

**Page 1**

**The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.**

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**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

02/01/2022

**2. Name**

**First** Marc

**Middle** Andrew

**Last** Valenzuela

**3. Home Address**

2530 E Juanita Ave, Mesa, AZ 85204

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Sr. Economic Development Project Manager

**6. Phone**

**Home Phone** (760) 460-1844

**Work Phone** (602) 263-2192

**Best time to call (a.m. or p.m.)** Either

**Fax number** Not answered

**7. Email Address**

marc.valenzuela@srpnet.com

**8. How long have you been a resident of Queen Creek?**

N/A

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**No**

**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

Queen Creek Economic Development Commission

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** Not answered

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** Not answered

**Parks and Recreation Advisory Board** Not answered

**Planning and Zoning Commission** Not answered

**Transportation Advisory Committee** Not answered

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

Queen Creek is poised for economic opportunity. The town has a top-notch economic development staff and I believe this commission plays a key role in assisting them as they drive forward the Town's long term success. I have had the pleasure of serving on this commission for the last two years and I would love to continue to serve.

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

I have worked in Economic Development in Arizona for nearly a decade. I bring to the commission experience at the state, municipal, and now regional level. Additionally, my educational background included a bachelor's degree in public policy and service, as well as a master's degree in public administration.

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

Ambassador Steering Committee, Greater Phoenix Economic Council

Board Member, Pinal Partnership

Awards Committee Chair, Arizona Association for Economic Development

Commissioner, Town of Queen Creek Economic Development Commission

**18. Are you available for evening meetings?**

Yes

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Not answered

**22. Resume**

[MV Resume 2022.pdf](#)

**I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.**

**Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.**

**23. Signature**

This question is marked as sensitive.

---

Submitter DB ID 40424  
IP Address 206.207.152.1  
Submission Recorded On 01/20/2022 10:02 am  
Time to Take the Survey 19 minutes, 30 secs.

**Page 1**

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**Town of Queen Creek  
Town Clerk's Office  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142  
Fax: 480-358-3001**

**1. Date**

01/20/2022

**2. Name**

**First** Brent

**Middle** Not answered

**Last** White

**3. Home Address**

3006 S. Greenwood

**4. Mailing Address (if different than home address)**

Not answered

**5. Occupation**

Business Development Analyst

**6. Phone**

**Home Phone** (480) 252-6632

**Work Phone** (480) 406-7438

**Best time to call (a.m. or p.m.)** 6:30am-5:30PM Mon-Thr

**Fax number** Not answered

**7. Email Address**

bwhite@gatewayairport.com

**8. How long have you been a resident of Queen Creek?**

N/A

**9. Are you a registered voter?**

**Yes**

**10. Do you live within the Town's incorporated limits?**

**No**

**11. Have you participated in the Queen Creek Citizen Leadership Institute?**

No

**12. If yes, did you graduate?**

No

**13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?**

Queen Creek EDC for 2-years

Various committees & task forces while working for the City of Phoenix for over 9-years

**14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)**

**Board of Adjustment** Not answered

**Economic Development Commission** 1

**Downtown Arts & Placemaking Advisory Committee** Not answered

**Parks and Recreation Advisory Board** Not answered

**Planning and Zoning Commission** Not answered

**Transportation Advisory Committee** Not answered

**15. Please describe why you would like to serve on this board, committee, commission, etc.**

Not answered

**16. Please describe special knowledge or expertise you have that would benefit the Town.**

Work experience:

· 2.5 years working for Phoenix-Mesa Gateway Airport

· 9.5 years working for the City of Phoenix Aviation & Finance Departments

· 1-year working for the State of Idaho, Boise State University

· Worked for my family's business that built and formerly owned/operated the Links Golf Course, formerly owned/operated Apache Sun Golf Course, and participated in various land deals in both QC and the surrounding area

Education:

BS in Business Management from ASU

MPA from ASU

Personal:

2nd generation native Arizonan

Lived in the SE valley for the last 30-years

**17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.**

Not answered

**18. Are you available for evening meetings?**

No

**19. Are you available for morning meetings?**

Yes

**20. Are you available for lunch meetings?**

Yes

**21. Are there days of the week you are not available for meetings? (Check all that apply)**

Friday

**22. Resume**

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**Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.**

**23. Signature**

Brent White

This question is marked as sensitive.

**BY-LAWS OF  
THE QUEEN CREEK ECONOMIC DEVELOPMENT COMMISSION**

**ARTICLE 1**

NAME

The name of the Commission shall be THE QUEEN CREEK ECONOMIC DEVELOPMENT COMMISSION, hereinafter referred to as the “Commission.” The Commission is an advisory body to the Town of Queen Creek Town Council, organized under the laws of the State of Arizona and the Town of Queen Creek.

**ARTICLE 2**

OFFICES

The principal office of the Queen Creek Economic Development Commission in the State of Arizona shall be located at the Queen Creek Town Hall or at such other place as shall be lawfully designated by the Queen Creek Town Council.

**ARTICLE 3**

PURPOSES

The Commission is formed pursuant to Chapter 2, Article 2-5, Section 2-5-8 of the Queen Creek Town Code. The purpose of the Commission is to make recommendations on ways to diversify Queen Creek’s economic base; stimulate and encourage job growth by making recommendations on economic development issues in light of economic impacts and Town policy and assist in identifying assets and resources appropriate for implementation of Queen Creek’s economic development strategy; all of which shall be accomplished in a manner consistent with sustained, prudent and reasonable growth. Economic development programs and projects specific to the Town Center will also be evaluated by the Commission.

**ARTICLE 4**

COMMISSION ORGANIZATION

**Section 4-1 Membership**

A. Number of Members - The Commission membership shall consist of at least eleven (11) regular, voting members, and shall not exceed a total of nineteen (19) persons. All members of the Commission shall be residents of the State of Arizona.

B. Classification of Members - Commission membership shall represent a broad cross section of the community. The regular members, known collectively as “Commissioners,” Liaison Members, and Ex-Officio Members shall consist of the following:

1) At-Large Members: This classification shall include at least four (4) regular, voting members. These members shall be individuals representing the private and public sector community, and include residents and nonresidents with identifiable interest in the activities and mission of the Commission. These members may include individuals who are:

- Professionals
- Real Estate Brokers and Developers
- Corporate Leaders (Commercial, Retail and Industrial Sectors)
- Small Business Owners
- Bankers



- Utility Service Representatives
- Public School Officials (University, Community College, K-12)
- Queen Creek citizens at large

At-large commissioners selected from the private and public sector, with the exception of the Ex-Officio and Liaison Members, shall be classified as “non-designated,” voting members.

2) Liaison Members. This classification shall include two (2) non-voting members. These members shall be individuals representing the following:

- Planning & Zoning Commission Member
- Queen Creek’s Board Representative from the Greater Phoenix Economic Council

3) Ex-Officio Members. This classification shall include four (4) non-voting members. These members shall be individuals representing the following:

- Town Manager, Queen Creek
- Director of Economic Development, Queen Creek
- Town Council ( up to two members from the Town Council to serve as non-voting members)

4) Designated Members. This classification shall include at least seven (7) regular, voting members. These members shall be individuals who have been consulted with, and are willing to serve, from the following specified positions:

- A representative(s) from the electric utilities and/or the gas utility serving Queen Creek.
- A representative from the Queen Creek Unified School District.
- A representative from Arizona State University.
- A representative from an area community college.
- A representative from Phoenix-Mesa Gateway Airport.
- A Town Center business owner or manager.
- The President of the Queen Creek Chamber of Commerce

C. Limitation of Membership. Commission members shall not serve as a voting member on more than one internal or external committee at the same time as defined and as set forth in the Town of Queen Creek Standard Form Bylaws for Designated Town Committees, and Task Forces, revised December 4, 2013 (the “Town’s Standard Bylaws”).

**Section 4-2 Voting powers**

A. Voting members. The voting members of the Commission shall be the regular members (At-large Members and Designated Members).

B. Non-voting members. The Liaison Members and Ex-Officio Members shall participate in discussions, but shall not vote.

**Section 4-3 Appointment**

A. Appointments of all regular members, Liaison Members, and Town Council members serving as Ex-Officio Members shall be made by the Mayor with the advice and consent of the Town Council.

B. The appointment of all regular members shall be conducted pursuant to Section VII. Member Appointment Process set forth in the Town’s Standard Bylaws.

#### **Section 4-4 Term**

Member terms shall be staggered so that the entire Commission will not need to be appointed or reappointed at the same time. At the time the Commission is first established, six regular members shall be appointed for one-year terms and the remainder of regular members shall be appointed to two-year terms. Successive appointments of regular, voting Commission members shall be for two-year terms. Liaison Members and Ex-Officio Members who are Town Council members shall serve two-year terms. Commission members shall serve until their successors are duly appointed.

#### **Section 4-5 Vacancies**

In the event of the death, resignation, or removal of any At-large Member of the Commission, the Mayor and Town Council shall appoint a new member, to serve for the unexpired portion of the term vacated. In the event of the death, resignation, or removal of any Designated Member, Ex-Officio, or Liaison Member of the Commission, the unexpired portion of the vacated term shall be filled by a new representative appointed by the entity represented.

#### **Section 4-6 Removal of Members**

All Commission members serve at the pleasure of the Town Council and may be removed without cause at any time by a majority vote of the Town Council. A Commission member may be removed for failure to meet the attendance requirements established by the Town's Standard Bylaws, conviction of a crime involving moral turpitude, repeated disruptive behavior after warning, or when in the opinion of the Mayor and Town Council removal is in the best interest of the Commission.

#### **Section 4-7 Powers, Duties, and Responsibilities**

A. The Commission shall make recommendations regarding economic development issues in light of economic impacts, Town policy, and what serves the long-term good of all the people of Queen Creek. Commission members are expected to study the agenda packet before each meeting and to educate themselves on economic development issues. The Commission shall have the power necessary to effectuate the purposes herein described, said powers including, but not limited to, the following:

- 1) To adopt Commission rules and bylaws.
- 2) Elect the Chair and Vice-Chair.
- 3) Develop Annual Work Programs
- 4) At the start of each new fiscal year receive annual approval of its 12-month work program by Town Council.
- 5) To keep and submit minutes to the Council for the information at the first regular Council meeting following an official meeting of the Commission.
- 6) Advise the Council on the status of its annual work program and achievement of various initiatives set forth by the Council for implementation.
- 7) Advise the Council on matters pertaining to the designated committees and work program approved by the Town Council.
- 8) Provide advice and direction for the Town's Economic Development staff.
- 9) Provide expertise to the Director of Economic Development in working with prospects, as appropriate.
- 10) Assist in the development of the Economic Development Department's Annual Action Plan.
- 11) Assist in updates to the Economic Development Strategic Plan, Town Center Plan and Redevelopment Area Plan
- 12) Appoint any committee as deemed necessary to carry out the goals of the Commission.
- 13) Make recommendations and/or reports to Town Council regarding Economic Development related projects.

B. Advisory Nature of Recommendations. All studies, reviews, recommendations and specific plans formulated or submitted by the Commission shall be advisory only and shall not be binding upon the final actions of the Economic Development Department, or the Queen Creek Town Council.

#### **Section 4-8 Officers**

A. Number of officers. The officers of the Commission shall be a Chair, Vice Chair and Secretary.

B. Election. The Commission shall elect, by majority vote, a Chair and Vice Chair annually from among the voting Commission members at the first meeting held in July, or if said meeting is not held, at the first meeting thereafter. The Commission's selection for Chair and Vice Chair shall be ratified by the Town Council.

- 1) The term of Chair and Vice Chair shall be one (1) year and any member serving as Chair and Vice Chair shall be eligible for re-election.
- 2) The Vice Chair shall act as Chair in the Chair's absence. In the absence of the Chair and Vice Chair, the Town Council representative and then the Director of Economic Development shall act as Chair.
- 3) Any vacancy for Chair or Vice Chair as may occur for any reason shall be filled for the remainder of the unexpired term from the Commission membership by majority vote of the Commission at the next meeting where a majority of the Commission is present.
- 4) The Chair or Vice Chair may be removed from their positions as Chair or Vice Chair at any time by a three fourths (3/4) majority vote of the eligible Commissioners.
- 5) The Chair shall preside at all meetings of the Commission, decide all points of order and procedure, perform any duties required by law, ordinance or by these bylaws.
- 6) The Chair shall have the right to vote on all matters before the Commission, and shall also have the right to make or second motions in the absence of a motion, or a second, made by a member.
- 7) The Director of Economic Development, or his/her designated representative, shall serve the Commission as Secretary. The Economic Development staff shall furnish professional and technical advice to the Commission.
- 8) The Chair shall be responsible for appointing such subcommittees as are necessary.
- 9) The Chair shall be responsible for reviewing future agenda items with the staffing department.
- 10) The Chair shall be responsible for establishing a regular meeting schedule in consultation with Commission members.
- 11) The Chair shall consider such matters and concerns of the Commission set forth in these bylaws or as directed by the Mayor and Town Council.

#### **Section 4-9 Meetings**

A. Regular Meetings - Regular meetings shall be held on the fourth Wednesday of every month at 7:30 a.m. Whenever a legal holiday is the same day as a meeting, such meeting shall either be canceled or rescheduled by motion and majority vote of the Commission. If a regularly scheduled meeting is to be canceled, twenty four (24) hours notice shall be given to all members. Regular meetings of the Commission shall be open to the public and the minutes of the proceedings, showing the vote of each member and records of its examinations and other official actions, shall be filed in the Town Clerk's Office as a public record. For any matter under consideration, any person may speak to the issue upon being recognized by the Chair and stating their name and the names of persons on whose behalf they are appearing. Regular meetings of the Commission shall be held at the Queen Creek Town Hall or at such other place as shall be lawfully designated by the Commission.

B. Special Meetings - Special meetings of the Commission may be called by, or at, the request of the Chair or Director of Economic Development at a time and place they may designate.

C. Notice of Meetings - Written notice of all meetings to Commission members shall be delivered by mail or in person at least 24 hours before the date of the meeting; except that where required by an actual emergency, members may be notified by telephone by the Secretary. Written notice may also be given by e-mail or other electronic means, consistent with the requirements of the open meeting law.

D. Quorum - A majority of the voting members of the Commission shall constitute a quorum for transacting business at any regular or special meeting. No action shall be taken at any regular or special meeting in the absence of a quorum, except to adjourn the meeting to a subsequent date. In the event a quorum is not present for a meeting, the Commission is prohibited from discussing any items from the agenda and the meeting shall be rescheduled. In the event a quorum is present at the beginning of a meeting and is not maintained throughout the meeting, no discussion may be taken until the quorum is regained. If a quorum cannot be regained, the meeting shall end.

E. Agenda - An agenda shall be prepared by the Secretary for each regular and/or special meeting of the Commission. The agenda shall include the various matters of business as scheduled for consideration by the Commission.

F. Order of Business. The Chair shall call the Commission to order and the Secretary shall record the members present or absent. The Chair may call each matter of business in order filed.

G. Voting

- 1) By majority vote, the Commission may defer action on any matter when it concludes that additional time for further study or input is necessary.
- 2) A majority vote of those Commission members present and voting shall be required to take official action including, but not limited to, the adopting of policy or submitting recommendations. When a motion in favor of any matter fails to receive an affirmative majority vote, i.e., a tie vote, it shall be entered into the minutes as a vote to deny the matter being considered. In the event that there is no motion, or the motion dies for lack of a second, it shall be entered into the minutes as a denial of the matter being considered. Nothing herein shall prevent any member from making a subsequent motion on any matter where a prior motion is not approved by a majority vote of members present.
- 3) Commission members shall disqualify themselves and abstain from voting whenever they may have a conflict of interest in the item under consideration, as described and provided by A.R.S. § 38-501 to 38-511.
- 4) Each member attending shall be entitled to one vote, exclusive of the Ex-Officio and Liaison Commission members. The minutes of the proceedings shall indicate the vote of the Commission on every matter acted upon, and shall indicate any absence or failure to vote. No member shall be excused from voting except on matters involving the consideration of their own official conduct, or such matters involving conflicts of interest.
- 5) A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adoption of all proposed findings and execution of all actions recommended in the staff report on file in the matter.

H. Recommendation to Town Council - The Commission shall forward a recommendation to Town Council of its findings and/or actions in writing with respect to the merits of the item under consideration within 30 days of the conclusion of the Commission meeting.

I. Open Meetings. The Commission and its subcommittees shall hold all meetings and conduct all business in accordance with Arizona Open Meeting Laws A.R.S. § 38-431 et seq. All meetings of the Commission, except Executive Sessions authorized by A.R.S. § 38-431.03, shall be open to the public.

J. Procedure Not Contained in Bylaws. All meetings of the Commission shall be, to the extent not in conflict with these bylaws, conducted according to the latest edition of Robert's Rules of Order, with the exception that the Chair of the Commission or subcommittee shall be permitted to vote on any motion.

K. Proxy Voting, Telephonic Participation. Proxy voting shall not be permitted. Telephonic participation may be permitted where, in the opinion of the Chair, members can participate fully by speaker phone or other remote device or application.

L. Agenda items. Items for the agenda may be proposed by any member of the Commission. The Chair shall approve the agenda for each meeting.

### **Section 4-10 Opinions**

Representation of Recommendations of the Commission/Expression of Personal Opinions; Communicating Personal Opinion in Conjunction with Majority Position of the Commission. When speaking or writing regarding a matter within the jurisdiction of the Commission, members of the Commission shall represent the official policies or positions of the Commission to the best of their ability. When presenting their individual opinions and positions, members shall explicitly state that the opinions they are expressing are their own, do not represent the views or opinions of the Town of Queen Creek or the Commission, and will not infer or suggest that the opinion they are expressing is the opinion of the Town.

## **ARTICLE 5**

### **OFFICIAL RECORDS**

#### **Section 5-1 Retention of Files**

The official records of the Commission shall include these rules and regulations, minutes of meetings and its adopted reports, which shall be deposited with the Town Clerk's Office and which shall be available for public inspection during regular office hours. All matters coming before the Commission shall be filed in the Economic Development Department in accordance with that Department's general file system. Original papers of all matters shall be retained as per the state approved retention schedule.

#### **Section 5-2 Recordings of Meetings**

All public meetings of the Commission will be recorded in written form and as required by the Arizona open meeting law. Any person desiring to have a meeting recorded by an electronic device or by a stenographic reporter, at their own expense, may do so, provided that they consult the Commission's Secretary to arrange facilities for such recording prior to the commencement of the meeting, and do not otherwise disrupt the proceedings.

## **ARTICLE 6**

### **MISCELLANEOUS**

#### **Section 6-1 Amending Bylaws**

Approval of the bylaws and a change in the bylaws shall require a concurring vote of three-fourths of the number of eligible voting members. These bylaws may be amended by a three fourths ( $\frac{3}{4}$ ) majority vote at any meeting of the Commission provided that notice of said proposed amendment(s) is given to each member in writing at least five (5) calendar days prior to said meeting and a copy of the proposed amendment sent with the notice. Such amendment(s) shall be subject to ratification by the Town Council and, if so approved, shall become effective at the next regular meeting of the Commission after ratification.

## **Section 6-2 Conflict of Interest**

Any member of the Commission who has a substantial interest as defined by A.R.S. § 38-502 in the outcome of any matter brought before the Commission shall make known the interest and the minutes of the meeting shall reflect that the member made such fact known. The member shall refrain from voting, discussing, or in any way participating in that matter. The Commission shall also follow the conflict of interest guidance in the Town of Queen Creek Committee, Board and Commission Handbook.

## **Section 6-3 Requests for Special Reports**

Requests for special studies or reports will be coordinated through the Director of Economic Development.

## **Section 6-4 Remuneration**

The members of the Commission shall receive no salary or other compensation for their services but shall be reimbursed, subject to approval by the Council, for expenditures incurred in the performance of duties as a member of the Commission. In no event shall such reimbursement exceed the amount budgeted by the Council for such purposes.

## **Section 6-5 Interpretation and Conflict**

These bylaws are subject to all applicable federal, state, county and town laws, ordinance, resolutions, orders or regulations.



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY AND THE TOWN OF QUEEN CREEK FOR THE ACQUISITION OF REAL PROPERTY AT THE SOUTHWEST CORNER OF ELLSWORTH ROAD AND THE QUEEN CREEK ROAD ALIGNMENT IN AN AMOUNT NOT TO EXCEED \$500. (FY 22 BUDGETED ITEM)

**DATE:** February 16, 2022

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**Suggested Action:**

Staff recommends approval of an Intergovernmental Agreement with the Flood Control District of Maricopa County for the purchase of 0.6438 acres (28,042 Square Feet) at the southwest corner of Ellsworth Road and the Queen Creek Road alignment, and to assume the easement rights east of the intersection along Queen Creek Road.

**Relevant Council Goal(s):**

Superior Infrastructure-Capital Improvement Program

**Discussion:**

The Rittenhouse Channel was constructed in 1998 to control flooding in the area by capturing and conveying runoff from the 100-yr storm event. The District operates and maintains the channel system from approximately ½-mile east of Ellsworth Road to the confluence with the East Maricopa Floodway. In order to construct the channel, the District acquired both fee land and permanent easements in 1997 and 1998. The permanent easement was acquired from the Queen Creek School District No. 95 and the fee land was acquired from a private corporation.

The property being acquired consists of all of Easement Parcel RR-38 as shown on the attached exhibit, and approximately the east 100-ft of Fee from Parcel RR-20 and from Parcel RR-20A to the western end of the riprap at the Ellsworth culvert outlet as shown on the attached exhibit. The acquisition of this property will give the Town unrestricted access to the area, and will assist in maintenance and other appurtenances for the roadway.

**Fiscal Impact:**

The Purchase Price for property shall be \$500, which has been established as the value of the property based upon an appraisal by an independent fee appraiser. Project A0210 Queen Creek Road: Ellsworth to 206th has sufficient budget available in FY 2021/22 to cover the acquisition of

property costs described in this motion. This project is growth-related and is being funded by construction sales tax.

**Alternatives:**

Council could decide not to move forward with the IGA; however, this would delay the adjacent project (A0210 Ellsworth Road and Queen Creek Road Intersection) or force the Town to obtain permits for maintenance of the roadway and other Town infrastructure.

**Attachment(s):**

1. [SITE MAP LOCATION](#)
2. [LEGAL DESCRIPTION](#)
3. [IGA with Flood Control District](#)



# Attachment 1

## Site Location



**Project No. 480.01.12  
RITTENHOUSE ROAD DRAIN  
Item No. RR-20 & RR20A**

**LEGAL DESCRIPTION**

Two parcels of land in the Northeast Quarter of Section Sixteen, Township Two South, Range Seven East of the Gila and Salt River Base and Meridian, and being more particularly described as follows:

**RR-20A Unassessed**

**Commencing** at the Northeast corner of said Section 16, being a brass cap in a handhole, from which the East quarter corner of said Section 16, a brass cap in a handhole, bears S 0°50'02" East, for a distance of 2645.47 feet;

thence South 00°50'07" East, for a distance of 141.65 feet;  
thence North 89°49'16" West, for a distance of 65.01 feet;  
thence North 00°50'07" West, for a distance of 141.65 feet;  
thence South 89°49'15" East, for a distance of 65.01 feet to the **Point of Beginning**.

The above described parcel contains 9,207 square feet or 0.2114 acres, more or less, and is depicted on attached Exhibit "B".

**RR-20 (APN: 304-66-008H, 008N (ptn. of)**

**Commencing** at the Northeast corner of said Section 16, being a brass cap in a handhole, from which the East quarter corner of said Section 16, a brass cap in a handhole, bears S 0°50'02" East, for a distance of 2645.47 feet;

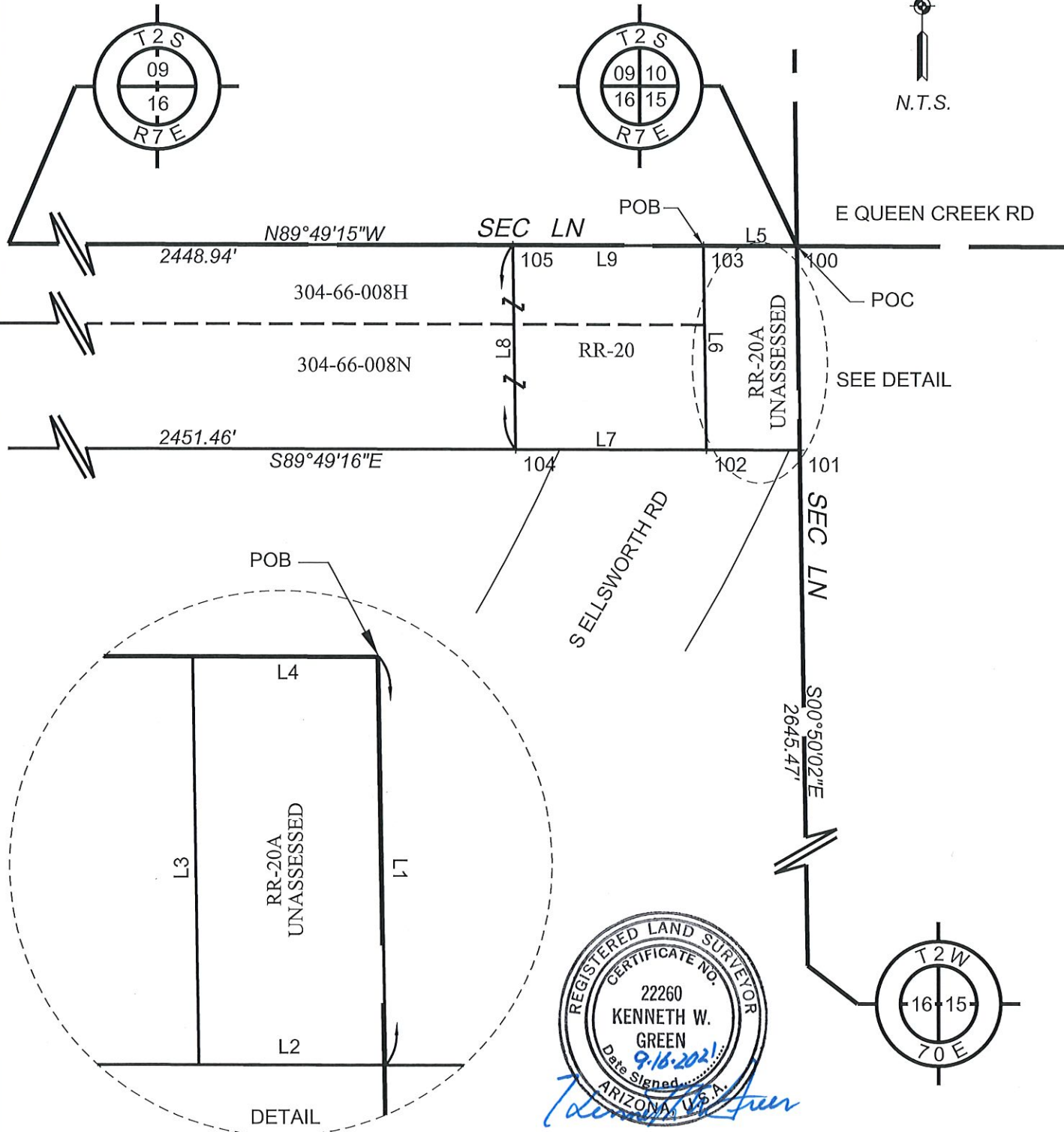
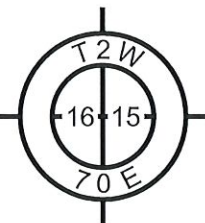
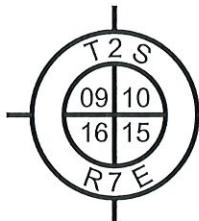
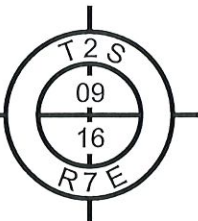
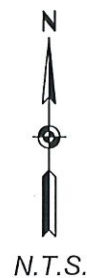
thence North 89°49'15" West, for a distance of 65.01 feet to the **Point of Beginning**;  
  
thence South 00°50'07" East, for a distance of 141.65 feet;  
thence North 89°49'16" West, for a distance of 133.02 feet;  
thence North 00°50'07" West, for a distance of 141.59 feet;  
thence South 89°50'54" East, for a distance of 133.02 feet to the **Point of Beginning**.

The above described parcel contains 18,835 square feet or 0.4324 acres, more or less, and is depicted on attached Exhibit "B".

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY		
Prelim: <i>JK 9/15</i>	Chk:	Appr:
Rev:		
Maricopa County Real Estate Department		



Exhibit "B"



MARICOPA COUNTY REAL ESTATE DEPARTMENT

RITTENHOUSE ROAD DRAIN

PROJECT No. 480.01.12

ITEM No. RR-20 & RR-20A

DATE 09/10/2021

R/W J.G. Tech J.A

Page of

Exhibit "B"

RR-20A

NO.	BEARING	LENGTH
L1	S 00°50'07" E	141.65'
L2	N 89°49'16" W	65.01'
L3	N 00°50'07" W	141.65'
L4	S 89°49'15" E	65.01'

RR-20

NO.	BEARING	LENGTH
L5	N 89°49'15" W	65.01'
L6	S 00°50'07" E	141.65'
L7	N 89°49'16" W	133.02'
L8	N 00°50'07" W	141.59'
L9	S 89°50'54" E	133.02'



RR-20A Area: 9,207 square feet or 0.2114 acres  
 RR-20 Area: 18,835 square feet or 0.4324 acres  
 Total Req'd. Area: 28,042 square feet or 0.6438 acres

2 of 2

MARICOPA COUNTY REAL ESTATE DEPARTMENT

RITTENHOUSE ROAD DRAIN

PROJECT No. 480.01.12	ITEM No. RR-20 & RR-20A	DATE 09/10/2021	R/W J.G. Tech J.A	Page of
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Return to:  
Flood Control District of Maricopa County  
2801 West Durango Street  
Phoenix, AZ 85009-6399

**INTERGOVERNMENTAL AGREEMENT**

between the

**Town Of QUEEN CREEK**

and the

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**

for the

**CONVEYANCE OF FEE TITLE AND PERMANENT EASEMENTS HELD AS PART**

of

**RITTENHOUSE CHANNEL DRAINAGE IMPROVEMENTS**

**IGA FCD 2021A008**

**Agenda Item \_\_\_\_\_**

This Intergovernmental Agreement (Agreement) is entered into by and between the Town of Queen Creek, a municipal corporation, acting by and through its Town Council, hereinafter called the TOWN, and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter called the DISTRICT. The DISTRICT and the TOWN may hereinafter individually be called a PROJECT PARTNER, or collectively called the PROJECT PARTNERS.

This Agreement shall become effective as of the date it has been executed by all PROJECT PARTNERS.

**STATUTORY AUTHORIZATION**

1. The DISTRICT is empowered by Arizona Revised Statutes (A.R.S.) Section 48-3603, as revised, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT.
2. The TOWN is empowered by A.R.S. Section 11-952, as amended, to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the TOWN.

**BACKGROUND**

3. The Rittenhouse Channel was constructed in 1998 to control flooding in the area by capturing and conveying runoff from the 100-yr storm event. The DISTRICT operates and maintains the channel system from approximately 1/2-mile east of Ellsworth Road to the confluence with the East Maricopa Floodway.
4. In order to construct the channel, the DISTRICT acquired both Fee land and Permanent Easements in 1997 and 1998. The permanent easement was acquired from the Queen Creek School District No. 95 and

the Fee land was acquired from a private corporation.

5. The subject parcels and easements are referred to herein collectively as the PROPERTY and reference to PROJECT refers to the Rittenhouse Channel Drainage Improvements and appurtenant structures contained within and are part of the PROPERTY.
6. The Town wishes to acquire the PROPERTY to facilitate planned projects in the area. The PROPERTY is shown on EXHIBIT A, attached hereto and made a part hereof.

### **PURPOSE OF THE AGREEMENT**

7. This Agreement identifies and defines the responsibilities of the DISTRICT and the TOWN, for the transfer of the PROPERTY and associated PROJECT elements.

### **TERMS OF AGREEMENT**

8. The BACKGROUND and PURPOSE OF THE AGREEMENT provisions are hereby incorporated into the terms of this Agreement.
9. The PROPERTY, as referenced herein, consists of the following parcels:
  - 9.1 All of Easement Parcel RR-38
  - 9.2 All of Fee Parcel RR-20A.
  - 9.3 Approximately the east 100-ft of Fee Parcel RR-20 from Fee Parcel RR-20A to the western end of the riprap at the Ellsworth culvert outlet.
    - 9.3.1 DISTRICT access from Ellsworth Road to existing maintenance roads will be maintained and any modifications to the existing access must be reviewed and approved by the DISTRICT.
  - 9.4 The exact dimensions of the PROPERTY will be identified by legal descriptions and exhibits to be developed to support this transfer.
10. The Purchase Price for PROPERTY shall be \$500 which has been established as the value of the PROPERTY based upon an appraisal by an independent fee appraiser with an adjustment for the net present value for other valuable consideration received by the DISTRICT from the TOWN. The Purchase Price shall be due and payable in lawful U.S. funds in one payment which shall be paid upon execution of the transfer.
11. Said purchase shall be consistent with and comply with all federal, state, city, county and municipal regulations, including but not limited to, A.R.S. 48-3603 (I), which states that "if any property sold by the District to a political subdivision without complying with § 9-402 is subsequently sold by the political subdivision as undeveloped property for a price exceeding the original sale price the district shall be paid the difference between the original price and the subsequent sale price."
12. The DISTRICT shall:
  - 12.1 Serve as the lead agency for execution of the transfer.

12.2 Upon execution of this Agreement, work to transfer the PROPERTY, associated PROJECT elements and all associated rights and responsibilities to the TOWN.

12.3 The DISTRICT reserves the right to review and comment on the design and/or construction of any future modifications to the PROJECT that may affect the hydraulic function of the PROJECT.

12.3.1 The DISTRICT will provide review comments to the TOWN within 3 weeks of receipt.

13. The TOWN shall:

13.1 Upon execution of this Agreement, accept the PROPERTY, associated PROJECT elements and all associated rights and responsibilities.

13.2 Be responsible for all operations and maintenance of the PROJECT.

13.2.1 The maintenance activities to be performed include, but are not limited to, maintaining the flood control function of the PROJECT, including sediment and vegetation removal and any and all aesthetic, park, and public use features, maintenance of landscaping, irrigation, multi-use trails and berms, removal of trash and debris, electricity and other operation costs for the facilities, vandalism repair and replacement, and structural repair and replacement of the flood control structures.

13.2.2 Schedule, and invite the DISTRICT to participate in, an annual inspection of the PROJECT. If any deficiencies in the PROJECT relating to flood control for which the TOWN is responsible are identified the PROJECT PARTNERS will expeditiously meet, agree on appropriate corrective actions to be taken, and cooperate in scheduling and completing the necessary corrective actions.

13.2.3 On an annual basis, commencing on the first anniversary date of acceptance of the PROJECT, the TOWN will provide written notification to the DISTRICT that the PROJECT has been properly maintained by the TOWN over the past year in accordance with the PROJECT design intent and to ensure proper hydraulic function.

13.3 Be responsible for assuring the safety and appropriateness of any non-flood control uses of the PROJECT rights-of-way and/or improvements prior to offering to make or making the PROJECT rights-of-way and/or improvements available for such uses.

13.4 Obtain DISTRICT review and comments on the design and/or construction of any future modifications to the PROJECT that may affect the hydraulic function of the PROJECT and resolve and/or incorporate the DISTRICT's comments into these future PROJECT modifications, as are agreed by the Project Partners to be necessary.

14. Each PROJECT PARTNER, and the PROJECT PARTNERS collectively, shall:

14.1 Pay for and not seek reimbursement for its own personnel and administrative costs associated with this transfer.

14.2 Equally share in any closing cost, transfer or recording fees due at the time of transfer.

- 14.3 Agree to use their best efforts and enter into good faith negotiations to resolve any disputed matters. However, this shall not limit the rights of the PROJECT PARTNERS to seek any remedies provided by law.
- 14.4 Take reasonable and necessary actions within its authority to ensure that only storm water is discharged into the PROJECT, and that such discharges into the PROJECT comply at the point of discharge with any applicable requirements of the U.S. Environmental Protection Agency Clean Water Act, Arizona Pollutant Discharge Elimination System or any other applicable discharge requirements, including any permit requirements.
15. Each PROJECT PARTNER shall, as “Indemnitor,” to the extent permissible by law, indemnify, defend and hold harmless the other PROJECT PARTNER (“Indemnitee”) from and against any and all loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of any act or omission of Indemnitor pursuant to this IGA, including but not limited to, reasonable attorneys’ fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the Indemnitee. Notwithstanding the above, Indemnitee shall be liable for its own negligence or wrongful acts as provided by law. In no event shall the Indemnitor owe or be obligated to pay any amounts which the Indemnitee has not actually paid or has no actual obligation to pay. In the event any agreement to pay to resolve issues of liability is not enforceable, or any agreement or settlement results in an actual obligation lower than the full amount of liability, the Indemnitor’s obligation to pay shall be limited to the amount Indemnitee has paid or would be obligated to pay in the absence of any agreement to indemnify. Should the TOWN offer to make or make the PROJECT available for any non-flood control uses, the TOWN shall, to the extent permissible by law, indemnify, defend and save harmless the DISTRICT, including agents, officers, directors and employees thereof, from any and all loss or expense incurred as a result of any claim or suit without limitation. Such indemnification obligation is intended to be a specific indemnity obligation rather than the general indemnity obligations set forth in this paragraph regarding all other types of claims or suits and shall include the obligation to provide reasonable attorneys’ fees, court costs, and other expenses relating to the defense of such claims or litigation.
16. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:
- |   |   |
|---|---|
| Flood Control District of Maricopa County<br>Director<br>2801 West Durango Street<br>Phoenix, AZ 85009-6399 | Town of Queen Creek<br>Town Manager<br>22358 S. Ellsworth Road<br>Queen Creek, AZ 85142 |
|---|---|
17. This Agreement shall expire upon completion of the transfer and after all funding obligations and reimbursements have been satisfied in accordance with this Agreement, whichever is the first to occur. However, by mutual written agreement, this Agreement may be amended or terminated. The operation, maintenance and indemnification provisions of this Agreement shall survive the expiration of this Agreement.
18. This Agreement is subject to cancellation by any party pursuant to the provisions of A.R.S. Section 38-511.
19. Attached to this Agreement or contained herein are the written determinations by the appropriate attorneys for the parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.



20. If legislation is enacted after the effective date of this Agreement that changes the relationship or structure of one or more parties to this Agreement, the parties agree that this Agreement shall be renegotiated at the written request of any party.

*SIGNATURE PAGES FOLLOW*

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**  
**A Political Subdivision of the State of Arizona**

Recommended by:

\_\_\_\_\_  
Michel A. Fulton, Director

\_\_\_\_\_  
Date

Approved and Accepted:

By: \_\_\_\_\_  
Chairman, Board of Directors      Date

Attest:

By: \_\_\_\_\_  
Clerk of the Board                      Date

The foregoing Intergovernmental Agreement IGA FCD 2021A008 has been reviewed pursuant to Arizona Revised Statutes Section 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

\_\_\_\_\_  
Flood Control District General Counsel      Date

**TOWN OF QUEEN CREEK**  
**A Municipal Corporation**

Recommended by:

\_\_\_\_\_ Date  
John Kross, Town Manager

Approved and Accepted:

By: \_\_\_\_\_  
Date Mayor Gail Barney

Attest:

By: \_\_\_\_\_  
---title Date

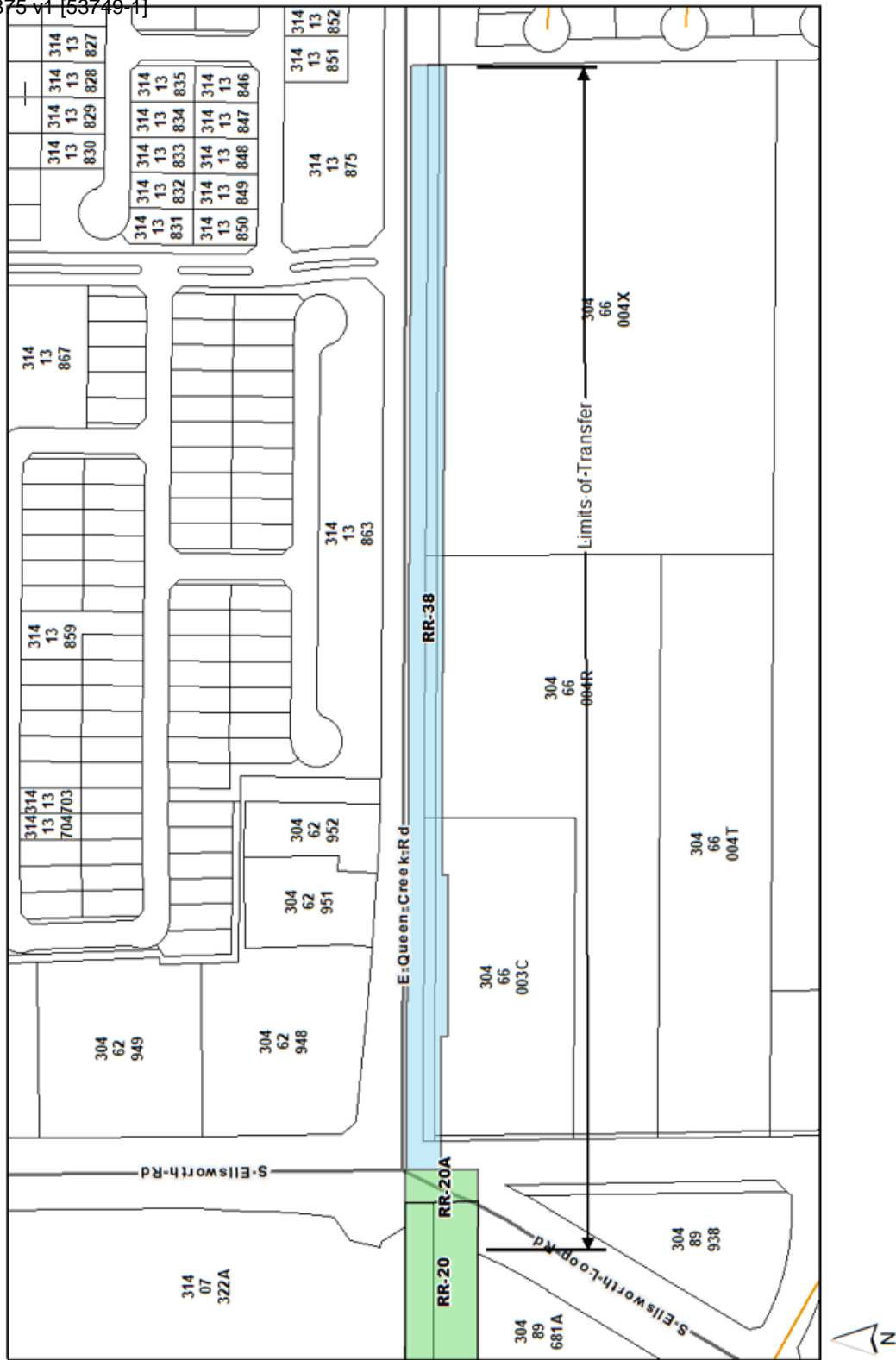
The foregoing Intergovernmental Agreement IGA FCD 2021A008 has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the Town of Queen Creek under the laws of the State of Arizona.

By: \_\_\_\_\_  
Town Attorney Date

IGA FCD 2021A008  
EXHIBIT A

Approximate Limits of Transfer

4849-9352-0375 v1 [53749-1]





TOWN OF  
**QUEEN CREEK**  
ARIZONA

8.E

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER**

**FROM: DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY AND THE TOWN OF QUEEN CREEK FOR THE CONSTRUCTION OF A TRAFFIC SIGNAL AT THE INTERSECTION OF GARY ROAD AND GRANGE PARKWAY IN AN AMOUNT ESTIMATED AT \$650,000, AND THE NECESSARY BUDGET ADJUSTMENTS. (THIS IS NOT A FY 22 BUDGETED ITEM)**

**DATE: February 16, 2022**

---

**Suggested Action:**

To approve an Intergovernmental Agreement with Pinal County and the Town of Queen Creek for the construction of a traffic signal at the intersection of Gary Road and Grange Parkway in an amount estimated at \$650,000 and the necessary budget adjustments.

**Relevant Council Goal(s):**

Superior Infrastructure - Capital Improvement Program

**Discussion:**

For the safety and welfare of the public, the Town of Queen Creek and Pinal County (“The Parties”) desire to improve the intersection functionality of Gary Road and Grange Parkway. With new development in this area resulting in an increase in traffic volumes, the Town has worked with Pinal County, the Queen Creek School District and the developer of Harvest Farms to secure funding for the design and construction of the new traffic signal at Gary Road and Grange Parkway.

The Town has, or is working to, secure funding for the design and construction of the signal from the following partners: Harvest Queen Creek In-Lieu payment - \$150,000, Queen Creek Unified School District - \$100,000 (IGA forthcoming), Pinal County - \$250,000 - 50% of the construction cost for the project and the Town of Queen Creek - \$150,000. The total anticipated cost for construction of the signal is \$500,000 with a total budget of \$650,000 that includes design and contingency.

The Parties agree to share in the total cost of Project as follows:

- A. The Town of Queen Creek will act as the project lead and will provide funding totaling \$150,000 for design and all costs associated with the construction of the project.
- B. Pinal County will pay fifty percent (50%) of all costs associated with the construction of the project.
- C. Any difference between estimated and actual Project cost shall be settled between the Town of

Queen Creek and Pinal County.

The project is currently scheduled to begin design immediately with the start of construction in early fall.

**Fiscal Impact:**

The total design and construction cost of the project is estimated to be \$650,000.

Project I0037 Gary Road and Grange Parkway was not included in the FY 2021/22 Adopted Budget, and a budget adjustment of \$650,000 from the FY 2021/22 Transportation CIP Contingency will be needed. The following table summarizes the budget adjustment required:

This project will be paid by the Harvest Queen Creek In-Lieu payment (\$150,000), the Queen Creek Unified School District (\$100,000 - IGA forthcoming), the Pinal County IGA (\$250,000 - 50% of the construction costs), and the Town of Queen Creek non-growth funding (\$150,000).

PROJECT	NAME	DESIGN & CONSTRUCTION COST	FY 2021/22 ADOPTED BUDGET	CONTINGENCY REQUIRED
I0037	GARY ROAD AND GRANGE PARKWAY	\$650,000	\$0	\$650,000

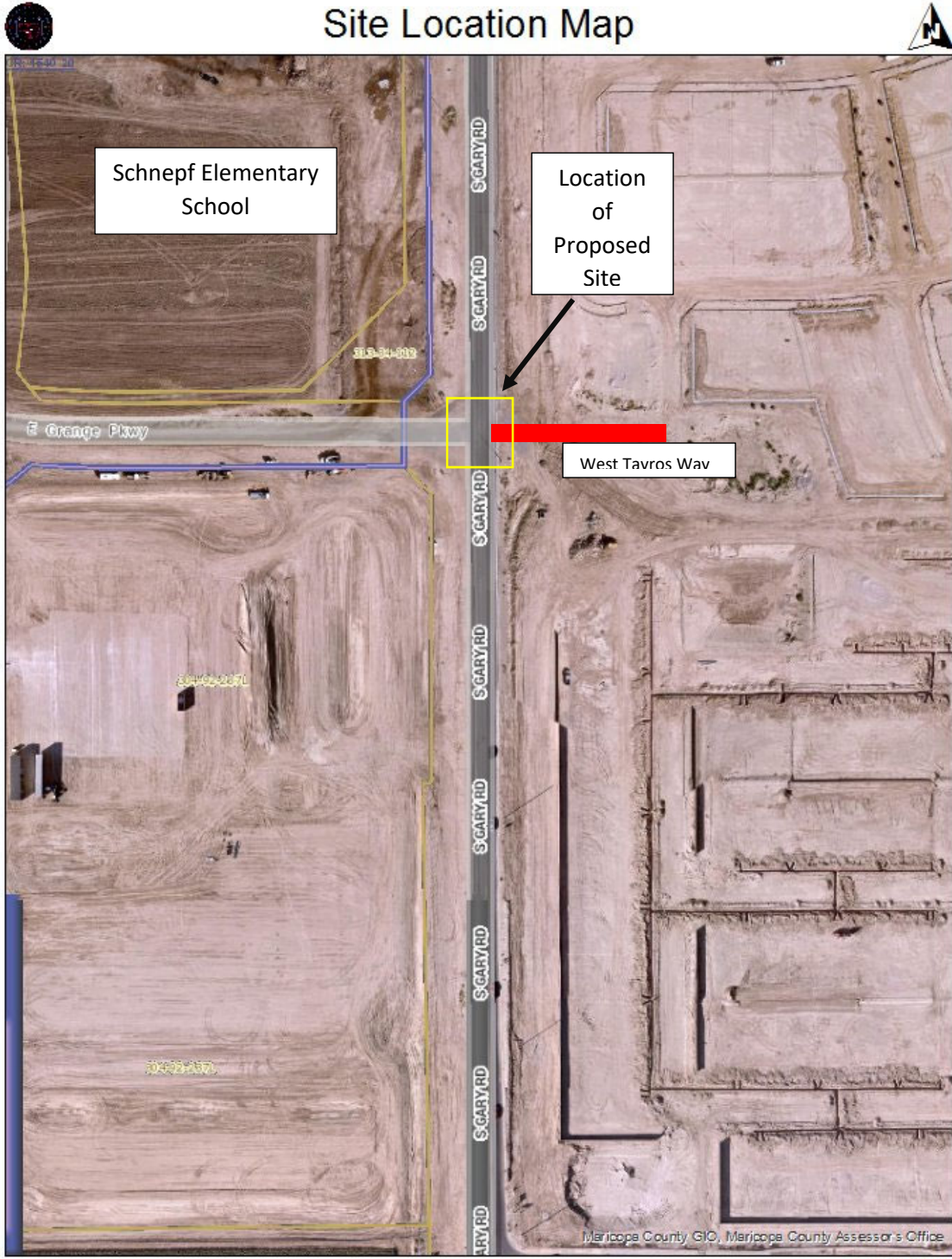
**Alternatives:**

Council may decide not to move forward with the IGA; however, this would delay the project or force the Town to provide additional funding for the project to satisfy the agreements with the other two parties involved.

**Attachment(s):**

1. [SITE MAP LOCATION](#)
2. [IGA Pinal County - Gary Road & Grange Parkway Traffic Signal](#)

# Site Location Map



**INTERGOVERNMENTAL AGREEMENT BETWEEN PINAL COUNTY AND THE TOWN OF QUEEN CREEK TO DEFINE RESPONSIBILITIES FOR THE CONSTRUCTION OF A TRAFFIC SIGNAL AT THE INTERSECTION OF GARY ROAD AND GRANGE PARKWAY**

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is made and entered into by and between Pinal County, a political subdivision of the State of Arizona, hereinafter referred to as “Pinal,” and the Town of Queen Creek, a municipal corporation of the State of Arizona, hereinafter referred to as “Queen Creek”. Pinal and Queen Creek are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”.

**I. RECITALS**

- A. The Parties are empowered by A.R.S. § 11-951 et seq. to enter into intergovernmental agreements for joint or cooperative action.
- B. Pursuant to A.R.S. § 11-251, §§ 9-240 and 243, and § 28-6707, the Parties have the authority to improve streets and highways and may cooperate with each other in the construction of improvements to streets and highways lying within their jurisdictions.
- C. For the safety and welfare of the public, the parties hereto desire to improve the intersection of Gary Road and Grange Parkway, hereinafter referred to as “Project”.

NOW, THEREFORE, in consideration of the covenants contained herein, the Parties agree as follows:

**II. SCOPE OF WORK**

The Project consists of the construction of a new traffic signal at the intersection of Gary Road and Grange Parkway. The construction of the Project is anticipated to begin in FY 2021/2022.

**III. FUNDING**

The total estimated cost for construction of the Project is \$500,000. The Parties agree to share in the total construction cost of Project as follows:

- A. Queen Creek will pay fifty percent (50%) of all costs associated with construction of the project.
- B. Pinal will pay all fifty percent (50%) of all costs associated with construction of the Project.



- C. Any changes in project costs due to change orders shall only affect the cost contribution of Pinal if agreed upon, in writing, by the Public Works Director or his designee.

#### **IV. AGREEMENT**

##### **A. Queen Creek shall:**

1. As Project Lead, be responsible for solicitation, contract management, public outreach coordination, project meetings, and other related duties for the project. Queen Creek shall submit all construction contracts to Pinal for Pinal's review and approval in accordance with the terms of this Agreement.
2. Submit road plans to Pinal for review and comment.
3. Upon approval of the construction contract, invoice Pinal for fifty percent (50%) of its proportional share of construction costs and invoice for remainder when construction is complete.
4. Upon completion of construction and acceptance by Queen Creek of the Project, provide for, at its own cost and as an item in its budget, proper maintenance of the new traffic signal.

##### **B. Pinal shall:**

1. Provide comments regarding the construction contracts within 14 business days of receipt of the contracts from Queen Creek.
2. Provide comments to road plans within 14 business days of receipt of the plans from Queen Creek.
3. Pay Queen Creek for its proportional share of the Project costs as outlined in paragraph (IV)(A)(3) within thirty (30) days of receipt of a properly-documented invoice from Queen Creek.

#### **V. GENERAL PROVISIONS**

- A. The foregoing recitals are hereby incorporated into this Agreement by reference as if more fully stated herein.
- B. This Agreement shall become effective upon the approval by both governing bodies of the parties hereto and the execution of this Agreement by the authorized representatives of both parties.

- C. To the fullest extent permitted by law, each Party to this Agreement, as Indemnitor, shall indemnify, defend, save, and hold harmless the other Party, its officers, employees, agents, officials, directors and representatives (collectively, "Indemnitees") from and against any and all liability, claims, losses, suits, actions, damages, and expenses (including but not limited to, court costs, attorneys' fees, and costs of claim processing, investigation and litigation (collectively "Claims") for any personal injury, bodily injury, loss of life, or loss or damage to property, or loses of use thereof, or any violation of any federal, state, or local law or ordinance, or other cause of action related to or arising out of the Indemnifying Party's performance of its obligations pursuant to the terms of this Agreement, or caused, in whole or in part, by the acts or omissions of the Indemnitor, or anyone for whose acts Indemnitor is responsible, in the performance of this Agreement. This indemnity includes any claim or amount arising out of or recovered under the Workers Compensation Law or arising out of the failure of Indemnitor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. In the event a Claim is made which is subject to this provision the Parties agree to cooperate in the investigation and defense of the Claim, including but not limited to, providing access to documents, witnesses and employees.
- D. This Agreement may be cancelled for conflict of interest without further obligation or penalty in accordance with A.R.S. § 38-511.
- E. All notices or demands required under this agreement from either party to the other shall be in writing and shall be deemed to have been received when the notice is delivered in person or three (3) days after deposited in a U.S. Mailbox in a postage prepaid envelope addressed as follows:
- |   |  |
|---|--|
| <p>John Kross<br/>Town Manager<br/>Town of Queen Creek<br/>22350 S. Ellsworth Rd.<br/>Queen Creek, AZ 85142</p> | <p>Leo Lew<br/>County Manager<br/>Pinal County<br/>P.O. Box 827<br/>Florence, AZ 85132</p> |
|---|--|
- F. The failure to exercise any right, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of that or any right, power or privilege. The acceptance by either party of sums less than may be due and owing to it at any time shall not be construed as an accord or satisfaction.
- G. Nothing in this Agreement shall be construed as either limiting or extending the lawful jurisdiction of either party hereto other than as expressly set forth herein.

- H. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and the parties agree that the venue for any claim arising out of or in any way related to this Agreement shall be the Superior Court of Pinal County, Arizona.
- I. This Agreement contains the entire agreement between the Parties, and no statements, promises or inducements made by either Party, their agents, or employees that are not contained herein shall be valid or binding. This agreement may not be altered except in writing and signed by each Party hereto.
- J. Pinal and Queen Creek agree that should any part of this Agreement be held to be invalid or void, the remainder of this Agreement shall remain in full force and effect and shall be binding upon the Parties.
- K. This Agreement shall remain in force and effect until completion of Project or termination or cancellation as provided within this Agreement. The Indemnification and insurance provisions shall survive the termination of this Agreement.
- L. Pursuant to the provisions of A.R.S. § 41-4401, each Party warrants to the other Party: (a) that the warranting Party and its subcontractors, if any, are in compliance with all federal immigration laws and regulations that relate to their employees and are in compliance with A.R.S. § 23-214(A); and (b) that a breach of this warranty is a material breach of this Agreement] that is subject to penalties up to and including termination of the contract or any subcontract;

Each Party retains the legal right to inspect the employment records of the other Party and its subcontractors, if any, to ensure compliance with this warranty. Neither Party will consider the other Party or any of its subcontractors in material breach of the foregoing warranty if the other Party and its subcontractors, if any, establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

- M. Pinal and Queen Creek agree that all contracts, if any, awarded to contractors in connection with the work to be performed under this Agreement shall include a provision stating that the contractor understands and acknowledges that contractor must comply with the Americans and Disabilities Act, The Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, A.R.S. § 34-301; A.R.S. §3 4-302; A.R.S. § 41-4401 and A.R.S. § 23-214(A) and that the contractor shall include this provision in any contract the contractor enters into with any and all of its

subcontractors who provide services under any contract awarded to contractor by Pinal or Queen Creek for the work to be performed under this Agreement.

- N. Pinal and Queen Creek agree that all contracts, if any, awarded to contractors and/or subcontractors in connection with the work to be performed under this Agreement shall include the following provisions:
1. The contractor, or subcontractor, whichever is applicable, warrants its compliance with all federal immigration laws and regulations relating to its employees and its compliance with A.R.S. § 23-214(A).
  2. A breach of warranty under paragraph 1 above shall constitute a material breach of the contract and is subject to penalties up to and including termination of the contract.
  3. Pursuant to the provisions of A.R.S. § 41-4401, the contractor or subcontractor, whichever is applicable, warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees and A.R.S. § 23-214 which requires verification of each employee's legal employability, after they are employed, using the e-verify program. Contractor and/or subcontractor shall obtain statements from their employees and subcontractors certifying compliance and shall furnish the statements to Pinal County. Pinal County at its sole discretion, conduct random verifications of employment records of the Contractor and any Subcontractors to ensure compliance. The Contractor agrees to assist in performing any such random verifications. These certifications shall remain in effect through the term of the contract. The contractor and subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the contract.
  4. ISRAEL BOYCOTT PROVISION. Each party to this Agreement certifies to the other that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35- 393.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the dates set forth below.

TOWN OF QUEEN CREEK, a municipal corporation of the State of Arizona

PINAL COUNTY, a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Chairman, Board of Supervisors

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Clerk/Deputy Clerk of the Board

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to form and within the powers and authority granted Queen Creek under the laws of the State of Arizona:

Approved as to form and within the powers and authority granted Pinal under the laws of the State of Arizona:

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Deputy County Attorney

4879-8785-4089 v1 [53749-1]



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF A ONE-YEAR ON-CALL PROFESSIONAL SERVICES CONTRACTS FOR CONSTRUCTION MANAGEMENT SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS WITH CONSULTANT ENGINEERING, INC.; CIVIL SOLUTIONS ENGINEERING & MANAGEMENT, LLC; ENTELLUS, INC.; KIMLEY-HORN AND ASSOCIATES, INC.; RITOCK-POWELL & ASSOCIATES; AND TRISTAR ENGINEERING & MANAGEMENT, INC.

**DATE:** February 16, 2022

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**Suggested Action:**

To approve a one-year On-Call Professional Services contract for Construction Management Services, with up to four possible one-year renewals, with Consultant Engineering, Inc.; Civil Solutions Engineering & Management, LLC; Entellus, Inc.; Kimley-Horn and Associates, Inc.; Ritoch-Powell & Associates; and Tristar Engineering & Management, Inc.

**Relevant Council Goal(s):**

Superior Infrastructure-Capital Improvement Program

**Discussion:**

The on-call list for Construction Management services is one of a series of on-call lists that staff is developing in order to provide more efficient and effective delivery of our Capital Improvement Program. The on-call list will save considerable time (minimum 4-6 weeks) hiring consultants to handle construction management issues that arise throughout the course of a project. All consultants have gone through an arduous selection process, are highly qualified to do the work, and met the Town's competitive pricing requirements.

On-call lists are identified as a best practice for effective project management (Best Practices in Project Delivery, National Cooperative Highway Research Program, 2009).

On September 20, 2021, the Town issued a (RFQ) No. 22-011 for On-Call Professional Services. On October 26, 2021, staff received 10 proposals in response to the Construction Management portion of this RFQ. The selection and evaluation process was conducted in accordance with Town policies

and procedures and administered by Purchasing staff. The proposals were reviewed by a three-member evaluation committee consisting of representatives from the CIP Department. The Town recommends awarding contracts to the six (6) highest scored proposals.

Annual expenditures under this contract cannot be determined in advance since services will be placed on an as-needed basis, according to the contract terms. The Request for Qualifications did not guarantee the awarded Consultants a contract amount; it stated that services would be requested on an as-needed basis. The contracts with the Consultants are for a one-year period with an option to renew for four additional one-year periods.

**Fiscal Impact:**

The award of these contracts does not explicitly obligate any dollar amount, but allows for the Town to procure work on an as-needed basis with the contractors designated.

There is no fiscal impact until the on-call services are needed for Construction Management services, at which time any project orders over \$25,000 will be presented to Council for approval, unless funding has already been approved under a Delegation Resolution. Project orders under \$25,000 will still only require Town Manager approval.

**Alternatives:**

Town Council could direct staff to go through the selection/bidding process each time a service is needed. This would add, cumulatively, significant time to each project as the selection time per service needed is 4-6 weeks.

**Attachment(s):**

1. [ON-CALL CONTRACTS-CONSTRUCTION MANAGEMENT](#)

# ATTACHMENT 1

On-Call Professional Services Contracts for  
Construction Management Services



# Contract/Agreement Review Cover Sheet

INSTRUCTIONS: Legal Review is required prior to submittal for Town Council and/or Town Manager approval. Public Works Director review and approval is required on all Public Works and/or Construction and A&E projects. Real Estate review and approval is required on all Real Estate matters. Purchasing review is also required. Complete this form for all contracts/agreements/IGA's/change orders/work orders/proposals/MOU's and submit to the Purchasing office for review/approval routing. Be sure to attach a staff report and all supporting documents for review(s).

## ALLOW THREE WEEKS FOR THE REVIEW PROCESS

Document Type:	<input type="text" value="Contract"/>	Contact Person:	<input type="text" value="Lorina Gillette"/>
Council Date:	<input type="text" value="2/16/2022"/>	S.A.M. verification	<input checked="" type="checkbox"/>
Department Name:	<input type="text" value="CIP"/>		
Vendor/Contractor:	<input type="text" value="See Description"/>	Vendor ID#:	<input type="text"/>
Brief Description:	<input type="text" value="On-Call contracts for as needed Construction Management Services from CEI, Civil Solutions, Entellus, Klmley-Horn, Ritoch-Powell and Tristar Engineering."/>		
Terms of Contract:	Start: <input type="text" value="2/16/2022"/>	End:	<input type="text" value="2/15/2023"/>
\$ Amount or Not to Exceed:	<input type="text"/>	Account Line Item #:	<input type="text"/>
Procurement Method:	<input type="text" value="RFQ 22-011 On-Call Professional Services"/>		

**Attachments:** \*Reference original contract number.

Check all that apply:

<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Cooperative Agreement	Original Contract # <input style="width: 100%;" type="text"/>	Cooperative Agreement # <input style="width: 100%;" type="text"/>	Change Order# Work Order # Project Order # <input style="width: 100%;" type="text"/>
<input type="checkbox"/> Staff Report	<input type="checkbox"/> IGA			
<input type="checkbox"/> Amendment	<input type="checkbox"/> *Change Order/Work Order No.			
<input type="checkbox"/> Easement				

**Approved:**

N/A	<input checked="" type="checkbox"/>	Real Estate: _____	Date: <input style="width: 100%;" type="text"/>
N/A	<input type="checkbox"/>	Dept Director: <u>Dave Lipinski</u> <small>Dave Lipinski (Dec 29, 2021 16:43 MST)</small>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input checked="" type="checkbox"/>	Dept Director: _____	Date: <input style="width: 100%;" type="text"/>
N/A	<input type="checkbox"/>	Purchasing: <u>Meliana Bauer</u>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input type="checkbox"/>	Town Attorney: <u>Todd A Baxter</u>	Date: <input style="width: 100%;" type="text"/>
N/A	<input checked="" type="checkbox"/>	Town Clerk: _____	Date: <input style="width: 100%;" type="text"/>



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Consultant Engineering, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for On-Call Construction Management Services; and

Consultant is qualified to perform the Services; and

The Mayor] is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

- 1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task Order", as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.
- 1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.
- 1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.
2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.
3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.
4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

### **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may

terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports, design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone

for whose acts the Consultant may be legally liable. It is the specific intention of the Parties that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.



2. The Consultant hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Consultant Engineering, Inc.  
10625 N. 25<sup>th</sup> Ave., Ste. 200  
Phoenix, AZ 85029  
Attn: Maher Osman, PE  
Email: [mosman@cei-az.com](mailto:mosman@cei-az.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent

by email transmission may also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. **RECORDS AND AUDIT RIGHTS.** Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. **INDEPENDENT CONTRACTOR.** The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. **TAXES.** Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. **COMPLIANCE WITH LAW.** The Consultant specifically agrees and hereby

warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to

Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

## **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

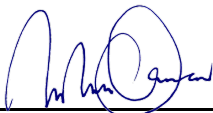
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**



\_\_\_\_\_  
Maher Osman, Executive Vice President  
Consultant Engineering, Inc

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

**EXHIBIT C**  
**NEGOTIATED FEE SCHEDULE**

December 09, 2021

Ms. Lorina Gillette, CPPB  
Bid & Contract Specialist  
Town of Queen Creek  
22358 S. Ellsworth Road  
Queen Creek, AZ 85142-9311  
480-358-3000

Email: [Lorina.Gillette@queencreekaz.gov](mailto:Lorina.Gillette@queencreekaz.gov)

Re: Exhibit C – Consultant Engineering Inc. Pricing Proposal  
RFQ No. 22-011 On-Call Professional Services  
CEI #: 925.00

Dear Ms. Gillette:


Consultant Engineering, Inc. (CEI) would like to thank the Town of Queen Creek for the opportunity to enter price negotiations with the Town and potentially provide Professional Services under this contract.

Enclosed as requested is the completed Exhibit C: Negotiated Pricing on the provided form. The form was completed as per instructions on your letter dated 11/30/2021.

We thank you for considering our proposal and should you have any questions or need any clarifications regarding the proposal please do not hesitate to contact me at (480) 258-4829 or [mosman@cei-az.com](mailto:mosman@cei-az.com). We look forward to continuing our association with the Town of Queen Creek.

Sincerely,

**CONSULTANT ENGINEERING, INC.**



Maher N. Osman, P.E.  
Executive Vice President

Enclosures: Exhibit C: Pricing

cc: CEI Project File (CEI #870.00)



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management  
Consultant Engineering, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Project Manager, PE	\$82.00	\$123.00	\$20.50	\$225.50
2	Sr. Resident Engineer, PE	\$77.00	\$115.50	\$19.25	\$211.75
3	Resident Engineer, PE / Construction Manager - Facilities	\$63.00	\$94.50	\$15.75	\$173.25
4	Project Supervisor, PE	\$54.00	\$81.00	\$13.50	\$148.50
5	Project Supervisor / Chief Inspector	\$48.00	\$72.00	\$12.00	\$132.00
6	Senior Inspector/ Field Office Manager	\$42.00	\$63.00	\$10.50	\$115.50
7	Lead Inspector/Office Administrator	\$38.00	\$57.00	\$9.50	\$104.50
8	Inspector/Tester/Clerical Office	\$33.00	\$49.50	\$8.25	\$90.75
9	Jr. Inspector/Clerical Assistant	\$25.00	\$37.50	\$6.25	\$68.75
10	Landscape / Electrical Inspector	\$40.00	\$60.00	\$10.00	\$110.00
11	SWPPP Coordinator / Inspector ECC	\$45.00	\$67.50	\$11.25	\$123.75
12	Chief Scheduler/Estimator	\$61.00	\$91.50	\$15.25	\$167.75
13	Registered Land Surveyor (RLS)	\$54.00	\$81.00	\$13.50	\$148.50
14	Survey Office Technician	\$40.00	\$60.00	\$10.00	\$110.00
15	Survey 2-Man Crew	\$75.00	\$112.50	\$18.75	\$206.25
16	Right of Way Manager	\$55.00	\$82.50	\$13.75	\$151.25



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management  
Consultant Engineering, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
17	Sr. Right of Way Agent	\$45.00	\$67.50	\$11.25	\$123.75
18	Right of Way Agent	\$40.00	\$60.00	\$10.00	\$110.00
19	Licensed Appraiser	\$50.00	\$75.00	\$12.50	\$137.50
20	Right of Way Licensed Admin.	\$35.00	\$52.50	\$8.75	\$96.25

Direct Expenses

\$.575/ Applicable Federal Mileage Rate

*\*Overtime is 1.5 for all non-professional classifications*



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Civil Solutions Engineering & Management, LLC, an Arizona limited liability company ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Construction Management Services; and  
Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task



Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Pricing of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, AZ 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Civil Solutions Engineering & Management, LLC  
PO Box 262  
Joseph City, AZ 86032  
Attn: T.C. Fish  
Email: [tcfish@csem-az.com](mailto:tcfish@csem-az.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. **RECORDS AND AUDIT RIGHTS.** Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. **INDEPENDENT CONTRACTOR.** The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. **TAXES.** Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. **COMPLIANCE WITH LAW.** The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply



with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

DocuSigned by:  
  
\_\_\_\_\_  
T.C. Fish, Group Manager  
Civil Solutions Engineering & Management LLC

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:** **Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:** **Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at *Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**





**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

## **EXHIBIT B**

### **INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

**EXHIBIT C**  
**NEGOTIATED FEE SCHEDULE**

4828-6497-5610 v1 [53749-1]



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management**

**Firm Name:** Civil Solutions

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Senior Resident Engineer	\$67.80	\$101.70	\$16.95	\$186.45
2	Resident Engineer	\$57.69	\$86.54	\$14.42	\$158.65
4	Lead Inspector	\$33.50	\$50.25	\$8.38	\$92.13
5	Inspector	\$26.98	\$40.47	\$6.75	\$74.20
6	Construction Office Manger (Admininstrative)	\$40.00	\$60.00	\$10.00	\$110.00
7	Materials Coordinator	\$33.33	\$50.00	\$8.33	\$91.66
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Entellus, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for [briefly describe type of services]; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**



1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: SHolcomb@dickinsonwright.com

Consultant: Entellus, Inc.  
3033 N. 44<sup>th</sup> St., Ste. 250  
Phoenix, AZ 85018  
Attn: Bill Linck  
Email: linck@entellus.com

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent

by email transmission may also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. **RECORDS AND AUDIT RIGHTS.** Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. **INDEPENDENT CONTRACTOR.** The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. **TAXES.** Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. **COMPLIANCE WITH LAW.** The Consultant specifically agrees and hereby

warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to



Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

## **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Bill Linck, Contract Manager  
Entellus, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

---

**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**





**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management**

**Firm Name: Entellus, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Project Principal (PE)	\$ 70.00	\$ 105.00	\$ 17.50	\$ 192.50
2	Project Manager	\$ 60.00	\$ 90.00	\$ 15.00	\$ 165.00
3	Resident Project Representative	\$ 50.00	\$ 75.00	\$ 12.50	\$ 137.50
4	Project Engineer	\$ 50.00	\$ 75.00	\$ 12.50	\$ 137.50
5	EIT	\$ 35.00	\$ 52.50	\$ 8.75	\$ 96.25
6	Field Inspector Level 3	\$ 40.00	\$ 60.00	\$ 10.00	\$ 110.00
7	Field Inspector Level 2	\$ 34.00	\$ 51.00	\$ 8.50	\$ 93.50
8	Field Inspector Level 1	\$ 28.00	\$ 42.00	\$ 7.00	\$ 77.00
9	Project Surveyor (RLS)	\$ 45.00	\$ 67.50	\$ 11.25	\$ 123.75
10	2-Person Survey Crew	\$ 50.00	\$ 75.00	\$ 12.50	\$ 137.50
11	Designer	\$ 44.00	\$ 66.00	\$ 11.00	\$ 121.00
12	CAD Tech	\$ 30.00	\$ 45.00	\$ 7.50	\$ 82.50
13	Admin Assistant	\$ 28.00	\$ 42.00	\$ 7.00	\$ 77.00



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Kimley-Horn and Associates, Inc., a North Carolina corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Construction Management Services; and Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability



for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Kimley-Horn and Associates, Inc.  
7740 N. 16<sup>th</sup> St. Ste. 300  
Phoenix, AZ 85020  
Attn: Brian Smalkoski  
Email: [brian.smalkoski@kimley-horn.com](mailto:brian.smalkoski@kimley-horn.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**



In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Brian Smalkoski, Vice President  
Kimley-Horn and Associates, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Ritoch-Powell & Associates, an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Construction Management Services; and  
Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability



for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Ritoch-Powell & Associates  
1001 N. Central Ave. Ste. 900  
Phoenix, AZ 85004  
Attn: Pete Hemingway  
Email: [phemingway@rpaeng.com](mailto:phemingway@rpaeng.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.



In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

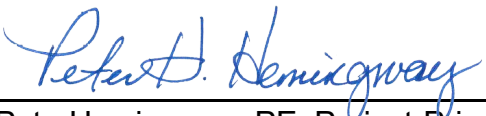
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Pete Hemingway, PE, Project Principal  
Ritoch-Powell & Associates

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

***Title of project***

**Project Task Order No. 01  
Contract No. \_\_\_\_\_  
Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

<b>TOWN:</b>	<b>Town of Queen Creek Project Manager: Telephone: Fax: E-mail:</b>
<b>CONSULTANT:</b>	<b>Firm Name Address Arizona Registration No. Federal Tax ID No.: Design Professional Representative: Telephone: Fax: E-mail:</b>

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

- 1. \_\_\_\_\_ Fixed Price:** All-inclusive in the above Project Task Order Price; or
- 2. \_\_\_\_\_ Fee plus Costs:** The Project Order Task Fee is in the amount of \$\_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible



for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management**

**Firm Name: Ritoch-Powell & Associates**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	88.94	133.41	22.24	244.59
2	Project Manager	69.95	104.93	17.49	192.36
3	Resident Engineer (PE)	54.81	82.22	13.70	150.73
4	Staff Engineer	52.41	78.62	13.10	144.13
5	EIT	39.10	58.65	9.78	107.53
6	Construction Inspection Supervisor	52.88	79.32	13.22	145.42
7	Senior Construction Inspector	48.08	72.12	12.02	132.22
8	Inspector	35.26	52.89	8.82	96.97
9	Administrator	33.63	50.45	8.41	92.48
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management**

**Firm Name: Ritoch-Powell & Associates**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Tristar Engineering & Management, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Construction Management Services; and  
Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,



design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Tristar Engineering & Management, Inc.  
10625 N. 25<sup>th</sup> Ave. Ste. 103  
Phoenix, AZ 85029  
Attn: John Akin  
Email: [jakin@tristar-az.com](mailto:jakin@tristar-az.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
John Akin, Principal/Contract Manager  
Tristar Engineering & Management, Inc.



**EXHIBIT A**

**PROJECT TASK ORDER FORM**



TOWN OF QUEEN CREEK,
an Arizona municipal corporation ("TOWN")

PROFESSIONAL PROJECT TASK ORDER

Title of project

Project Task Order No. 01
Contract No.
Project No.

THIS PROJECT ORDER is made and entered into on the day of 20 by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. dated between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

TOWN: Town of Queen Creek
Project Manager:
Telephone:
Fax:
E-mail:

CONSULTANT: Firm Name
Address
Arizona Registration No.
Federal Tax ID No.:
Design Professional Representative:
Telephone:
Fax:
E-mail:

PROJECT DESCRIPTION: This Project Task Order #01 is

The Project is scheduled to commence on and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

PROJECT SITE ADDRESS/LOCATION: The Project for this Project Task Order # 01 is located at Location of Project

PROJECT TASK ORDER PRICE (Not to Exceed): \$XXXXXX

- 1. Fixed Price: All-inclusive in the above Project Task Order Price; or
2. Fee plus Costs: The Project Order Task Fee is in the amount of \$ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.





RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Construction Management**

**Firm Name: Tristar Engineering and Management, Inc.**

Item	Classification / Title	Average Hourly Rate	Overhead (144.11%)	Net Fee (10%)	Total Hourly Rate
1	Principal	\$111.54	\$160.74	\$27.23	<b>\$299.51</b>
3	Senior Construction Manager	\$91.80	\$132.29	\$22.41	<b>\$246.50</b>
4	Construction Manager	\$69.12	\$99.61	\$16.87	<b>\$185.60</b>
5	Chief Construction Inspector	\$57.24	\$82.49	\$13.97	<b>\$153.70</b>
6	Senior Construction Inspector	\$50.58	\$72.89	\$12.35	<b>\$135.82</b>
7	Lead Inspector	\$45.54	\$65.63	\$11.12	<b>\$122.28</b>
8	General Inspector	\$36.36	\$52.40	\$8.88	<b>\$97.63</b>
9	Materials Tester	\$28.08	\$40.47	\$6.85	<b>\$75.40</b>
10	Construction Office Manager	\$43.56	\$62.77	\$10.63	<b>\$116.97</b>
11	Construction Office Administrator	\$36.99	\$53.31	\$9.03	<b>\$99.33</b>

**Direct Expenses:**

Mileage (GSA Rate) \$0.56 per mile



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF A ONE-YEAR ON-CALL PROFESSIONAL SERVICES CONTRACTS FOR GEOTECHNICAL ENGINEERING SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH ACS SERVICES, LLC; ATEK ENGINEERING CONSULTANTS, LLC; NINYO & MOORE GEOTECHNICAL AND ENVIRONMENTAL SCIENCES CONSULTANTS; SPEEDIE & ASSOCIATES, INC.

**DATE:** February 16, 2022

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**Suggested Action:**

To approve a one-year On-Call Professional Services Contract for Geotechnical Engineering Services, with up to four possible one-year renewals, with ACS Services, LLC; ATEK Engineering Consultants, LLC; Ninyo & Moore Geotechnical and Environmental Sciences Consultants; Speedie & Associates, Inc.

**Relevant Council Goal(s):**

Superior Infrastructure - Capital Improvement Program

**Discussion:**

The on-call list for Geotechnical Engineering services is one of a series of on-call lists that staff is developing in order to provide more efficient and effective delivery of our Capital Improvement Program. The on-call list will save considerable time (minimum 4-6 weeks) hiring consultants to handle geotechnical engineering issues and material testing needs that arise throughout the course of a project. All consultants have gone through an arduous selection process, are highly qualified to do the work, and met the Town's competitive pricing requirements. On-call lists are identified as a best practice for effective project management (Best Practices in Project Delivery, National Cooperative Highway Research Program, 2009).

On September 20, 2021, the Town issued a (RFQ) No. 22-011 for On-Call Professional Services. On October 26, 2021, staff received 9 proposals in response to the Geotechnical Engineering portion of this RFQ. The selection and evaluation process was conducted in accordance with Town policies and procedures and administered by Purchasing staff. The proposals were reviewed by a three-member evaluation committee consisting of representatives from the CIP Department. The Town recommends awarding contracts to the four (4) highest scored proposals.

Annual expenditures under this contract cannot be determined in advance since services will be

placed on an as-needed basis, according to the contract terms. The Request for Qualifications did not guarantee the awarded Consultants a contract amount; it stated that services would be requested on an as-needed basis. The contracts with the Consultants are for a one-year period with an option to renew for four additional one-year periods.

**Fiscal Impact:**

The award of these contracts does not explicitly obligate any dollar amount, but allows for the Town to procure work on an as-needed basis with the contractors designated. There is no fiscal impact until the on-call services are needed for Geotechnical Engineering services, at which time any project orders over \$25,000 will be presented to Council for approval, unless funding has already been approved under a Delegation Resolution. Project orders under \$25,000 will still only require Town Manager approval.

**Alternatives:**

Town Council could direct staff to go through the selection/bidding process each time a service is needed. This would add, cumulatively, significant time to each project as the selection time per service needed is 4-6 weeks.

**Attachment(s):**

1. [ON-CALL PROFESSIONAL SERVICE CONTRACTS](#)

# ATTACHMENT 1

On-Call Professional Services Contracts for  
Geotechnical Engineering Services

# Contract/Agreement Review Cover Sheet

INSTRUCTIONS: Legal Review is required prior to submittal for Town Council and/or Town Manager approval. Public Works Director review and approval is required on all Public Works and/or Construction and A&E projects. Real Estate review and approval is required on all Real Estate matters. Purchasing review is also required. Complete this form for all contracts/agreements/IGA's/change orders/work orders/proposals/MOU's and submit to the Purchasing office for review/approval routing. Be sure to attach a staff report and all supporting documents for review(s).

## ALLOW THREE WEEKS FOR THE REVIEW PROCESS

Document Type:	<input type="text" value="Contract"/>	Contact Person:	<input type="text" value="Lorina Gillette"/>
Council Date:	<input type="text" value="2/16/2022"/>	S.A.M. verification	<input checked="" type="checkbox"/>
Department Name:	<input type="text" value="CIP"/>		
Vendor/Contractor:	<input type="text" value="See Description"/>	Vendor ID#:	<input type="text"/>
Brief Description:	<input type="text" value="On-Call contracts for as needed Geotechnical Engineering Services from ACS Services, ATEK Engineering Consultants, Ninyo &amp; Moore and Speedie &amp; Associates."/>		
Terms of Contract:	Start: <input type="text" value="2/16/2022"/>	End:	<input type="text" value="2/15/2023"/>
\$ Amount or Not to Exceed:	<input type="text" value="NA"/>	Account Line Item #:	<input type="text"/>
Procurement Method:	<input type="text" value="RFQ 22-011 On-Call Professional Services"/>		

**Attachments:** \*Reference original contract number.

Check all that apply:

<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Cooperative Agreement	Original Contract #	Cooperative Agreement #	Change Order#
<input type="checkbox"/> Staff Report	<input type="checkbox"/> IGA	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Amendment	<input type="checkbox"/> *Change Order/Work Order No.			
<input type="checkbox"/> Easement				

### Approved:

N/A	<input checked="" type="checkbox"/>	Real Estate: _____	Date: <input type="text"/>
N/A	<input type="checkbox"/>	Dept Director: <u>Dave Lipinski</u> <small>Dave Lipinski (Dec 29, 2021 16:43 MST)</small>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input checked="" type="checkbox"/>	Dept Director: _____	Date: <input type="text"/>
N/A	<input type="checkbox"/>	Purchasing: <u>Melissa Bauer</u>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input type="checkbox"/>	Town Attorney: <u>Todd A Baxter</u>	Date: <input type="text"/>
N/A	<input checked="" type="checkbox"/>	Town Clerk: _____	Date: <input type="text"/>



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and ACS Services, LLC, an Arizona limited liability company ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Geotechnical Engineering Services; and Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**



1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: ACS Services LLC  
2235 W. Broadway Rd.  
Mesa, AZ 85202  
Attn: Annemarie Haenfler  
Email: [annemarie@acsservicesllc.com](mailto:annemarie@acsservicesllc.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393



14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

## **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

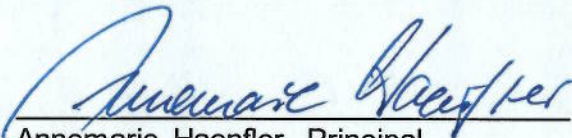
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Annemarie Haenfler, Principal  
ACS Services LLC

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]



**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Geotechnical Engineering**

**Firm Name: ACS Services LLC**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Senior Engineer	50.48	75.72	12.62	138.82
2	Project Manager	39.66	59.50	9.92	109.07
3	Administrative	26.00	39.00	6.50	71.50
4	Data Logger for Drilling (Engineer In Training or Geologist In Training)	26.44	39.66	6.61	72.72
5	Field Technician (ATTI/ACI Certified)	28.00	42.00	7.00	77.00
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					

Firm: ACS Services LLC  
 Address: 2235 W. Broadway Rd., Mesa AZ 85202  
 Phone: 480-968-0190  
 Email: acs@acsservicesllc.com

 Contract No.: Town of Queen Creek - RFQ 22-011  
 Project Name:  
 Contract Type:  
 Date: Calendar Year 2022

**Drilling Services with crew & required equipment**

Drill Method	Drill Rig Type	Transport type (Truck/track/2 wheel/4 Wheel)	# of Crew members	Depth Range	Rate	Unit
Auger	CME 45 or 75 or Equiv	Truck 2WD	2	0 to 20 ft	\$186.00	hr
Rig Prep					\$106.00	ea
Mob and Demob - Crew	Each way				\$159.00	hr
Mob and Demob - Mile	Rig Only each way				\$0.85	mile
Mob and Demob - Mile	Support Trucks each way				\$0.47	mile
Auger	CME 45 or 75 or Equiv	Truck 2WD	2	20 ft +	\$32.00	ft
Rig Prep					\$318.00	ea
Mob and Demob - Crew	Each way				\$159.00	hr
Mob and Demob - Mile	Rig Only each way				\$0.85	mile
Mob and Demob - Mile	Support Trucks each way				\$0.472	mile
Rock Core/Mud Rotary	CME 75 or Equiv	Truck 2WD	3	0 to 180 ft	\$53.00	ft
Rig Prep					\$318.00	ea
Mob and Demob - Crew	Each way				\$186.00	hr
Mob and Demob - Mile	Rig Only each way				\$0.85	mile
Mob and Demob - Mile	Support Trucks each way				\$0.472	mile
Percussion/Direct Push	CME 75 or Equiv	Truck 2WD	3	0 to 50 ft	\$43.00	ft
Percussion	CME 75 or Equiv	Truck 2WD	3	50 ft +	\$48.00	ft
Rig Prep					\$318.00	ea
Mob and Demob - Crew	Each way				\$186.00	hr
Mob and Demob - Mile	Rig Only each way				\$0.85	mile
Mob and Demob - Mile	Support Trucks each way				\$0.472	mile
Stand by	Any	Any			\$186.00	hr
Any Drill Method	4WD	4WD		Any	+15%	
Additonal Crew member when required					\$57.00	hr

- Soil Boring (Specialized Equipment) To be negotiated per project following parameters established by Scope or Work

**Other Services**

Type	Rate per hour/unit	Unit
Backhoe with operator	\$133.00	hr
Well Completion/Install (rig and 2-man crew)	\$239.00	hr+matl
Pavement Coring	\$100.00	hr
Pavement Patch With cold patch	\$21.00	hole
Pavement Patch With quick set concrete	\$21.00	hole
ADWR Permits	\$318.00	ea permit
Well Abandonment	\$164.00	hr+matl

Firm: ACS Services LLC  
 Address: 2235 W. Broadway Rd., Mesa AZ 85202  
 Phone: 480-968-0190  
 Email: acs@acsservicesllc.com

 Contract No.: Town of Queen Creek - RFQ 22-011  
 Project Name:  
 Contract Type:  
 Date: Calendar Year 2022

**Supplies/Equipment**

Item	Rate per hour/unit	Unit
Support truck	\$106	day
Brass Sleeves (1-inch)	\$20.00	ea sleeve
HQ Core Boxes	\$16.00	ea
ODEX Pilot Bit (for ODEX drilling)	\$2,836.00	ea
ODEX Reamer (for ODEX drilling)	\$1,871.00	ea
Tri Cone Bit (if Mud Rotary required)	\$795.00	ea
Slurry Backfill with Cement and Cuttings (1 sack mix), (simple abandonment)	\$5.00	ft
Grout Backfill, per foot (simple abandonment)	\$12.00	ft
Bentonite Backfill, per foot (simple abandonment)	\$12.00	ft
Mixer for Slurry or Grout Backfill, (if required)	\$371.00	hole
Bentonite, when used for drilling/sealing	11	sack
55 gal DOT drums	\$64.00	ea
Water Trailer (500 gal)	\$133.00	day or fract
Generator, (under 3500 watts)	\$42.00	day or fract
Air Compressor	\$451.00	day or fract

**Laboratory Testing**

TEST	TEST METHOD DESIGNATION	ACS Code	PER TEST COST
Water Content	AASHTO T 265	S-108	\$22.00
Undisturbed Ring Density/Moisture	D2937	S-120	\$38.00
Grain Size Analysis	ARIZ 201, ARIZ 248	S-104	\$86.00
Hydrometer Analysis	AASHTO T 88	S-105	\$180.00
Dry Unit Weight	Measured Volume		\$24.00
Atterberg Limits (PI) Dry Prep	AASHTO T 89, T 90	S-107	\$79.00
Atterberg Limits (PI) Wet Prep	AASHTO T 146, T 89, T 90	S-107W	\$83.00
Direct Shear Test (on in-situ or compacted specimen)	ARIZ 249	S-115	\$265.00
Moisture-Density Relationship (Proctor)	T 99, ARIZ 225, ARIZ 226 ARIZ 227, ARIZ 245	S-101	\$128.00
Determination of pH and Resistivity of Soil	ARIZ 236	S-110+S-111	\$154.00
Sulfate Content of Soil	ARIZ 733	S-117	\$53.00
Chloride Content of Soil	ARIZ 736	S-117	\$53.00
Determination of pH and Soluble Salts of Soil	ARIZ 237		\$64.00
In-Place Density by Sand-Cone Test	ARIZ 230		\$27.00
In-Place Density by Nuclear Gauge	ARIZ 235		\$24.00
Resistance R-Value of Compacted Soils	AASHTO T 190	S-122	\$371.00
One Dimensional Consolidation Test	AASHTO T 216	S-112	\$154.00
Expansion Index (EI)	D4829	S-121	\$148.00
One-Dimensional Swell or Settlement Potential of Cohesive Soils	ASTM D 4546	S-103	\$92.00

DBE Certification

 Yes

 No



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and ATEK Engineering Consultants, LLC, an Arizona limited liability company ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Geotechnical Engineering Services; and Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**



1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: ATEK Engineering Consultants, LLC  
111 S. Webber Dr. Ste. 1  
Chandler, AZ 85226  
Attn: Armando Ortega, PE  
Email. [aortega@atekec.com](mailto:aortega@atekec.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393



14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Armando Ortega, Contract Manager/Principal Geotechnical Engineer  
ATEK Engineering Consultants, LLC

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



TOWN OF QUEEN CREEK,
an Arizona municipal corporation ("TOWN")

PROFESSIONAL PROJECT TASK ORDER

Title of project

Project Task Order No. 01
Contract No.
Project No.

THIS PROJECT ORDER is made and entered into on the \_\_\_ day of \_\_\_, 20\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_, dated \_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

TOWN: Town of Queen Creek
Project Manager:
Telephone:
Fax:
E-mail:

CONSULTANT: Firm Name
Address
Arizona Registration No.
Federal Tax ID No.:
Design Professional Representative:
Telephone:
Fax:
E-mail:

PROJECT DESCRIPTION: This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

PROJECT SITE ADDRESS/LOCATION: The Project for this Project Task Order # 01 is located at Location of Project

PROJECT TASK ORDER PRICE (Not to Exceed): \$XXXXXX

- 1. Fixed Price: All-inclusive in the above Project Task Order Price; or
2. Fee plus Costs: The Project Order Task Fee is in the amount of \$\_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]



**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Geotechnical Engineering**

**Firm Name: ATEK Engineering Consultants, LLC.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 60.10	90.15	\$ 15.03	\$ 165.28
2	Senior Engineer	\$ 45.67	68.505	\$ 11.42	\$ 125.59
3	Project Engineer	\$ 40.86	61.29	\$ 10.22	\$ 112.37
4	Project Manager	\$ 43.07	64.605	\$ 10.77	\$ 118.44
5	Staff Professional	\$ 34.83	52.245	\$ 8.71	\$ 95.78
6	Certified Welding Inspector	\$ 29.50	44.25	\$ 7.38	\$ 81.13
7	Special Inspector	\$ 27.25	40.875	\$ 6.81	\$ 74.94
8	Senior Engineering Technician	\$ 25.46	38.19	\$ 6.37	\$ 70.02
9	Engineering Technician	\$ 21.86	32.79	\$ 5.47	\$ 60.12
10	Project Coordinator	\$ 20.75	31.125	5.1875	57.06
11	Administrative	\$ 19.50	29.25	4.875	53.63
12					
13					
14					
15					
16					

**Subconsultants**

Subconsultants must also submit a Fee Schedule.  
 List Firm Names of all subconsultants here.

Test Method	Unit	Fee
-------------	------	-----

**Direct and Outside Expenses**

Maintenance & Protection of Traffic	Quote per Task	N/A
Soil Borings (CME-55 or equivalent) 2 Man Crew, Operator & Helper	Quote per Task	N/A
Soil Borings (CME-75 or equivalent) 2 Man Crew, Operator & Helper	Quote per Task	N/A
Soil Borings (Specialized Equipment)	Quote per Task	N/A
Test Pits (Rubber-tired backhoe)	Quote per Task	N/A

**Reimbursables**

Mileage (within Phoenix-metro only)	mile	\$0.56
Expense of Reproduction (Actual cost + %)	%	15%

**1.0 - Asphalt Concrete Testing**

A. Bulk Specific Gravity of Bituminous Mixtures, SSD	ASTM D2726, AASHTO T166	Ea	\$32.00
B. Bulk Specific Gravity Using Paraffin-Coated Specimens	ASTM D1188, AASHTO T275	Ea	\$50.00
C. Extraction and Gradation of Bituminous Materials	ASTM D2172, AASHTO T164	Ea	\$195.00
D. Gyratory Compaction (set of two)	AASHTO TP4	Ea	\$175.00
E. Ignition Only	ARIZ 427, AASHTO TP53	Ea	\$120.00
F. Ignition Oven Calibration (ARIZ Method)	ASTM D6307-98	Ea	\$450.00
G. Ignition-Gradation (AASHTO, ADOT)	AZ 427, ASTM D6307-98	Ea	\$150.00
H. Marshall Test - 6 Inch Specimens, Stability, Flow, Bulk Density (Set of 3)	N/A	Ea	\$200.00
I. Marshall Test - Stability, Flow, Bulk Density (Set of 3)	ASTM D1559, AASHTO T245	Ea	\$150.00
J. Tensile Strength Ratio, Root-Tunnicliff Method	ASTM D4867, AASHTO T283	Ea	\$445.00
K. Theoretical Maximum Specific Gravity, Rice Test	ASTM D2041, AASHTO T209	Ea	\$135.00

**2.0 - Portland Cement Concrete**

A. Compressive Strength - Concrete Cores (includes trimming)	ASTM C42, AASHTO T24	Ea	\$38.00
B. Compressive Strength - Concrete Cylinders	ASTM C39, AASHTO T22	Ea	\$17.00
C. Compressive Strength - Concrete Masonry Units	ASTM C140	Ea	\$87.00
D. Compressive Strength - Grout Prisms	UBC 21-17	Ea	\$20.00
E. Compressive Strength - Masonry Prisms (2Blocks)	ASTM E447, UBC 24-26	Ea	\$143.00
F. Compressive Strength - Mortar Cylinders	ASTM C109, AASHTO T106	Ea	\$20.00
G. Compressive Strength - Soil Cement (ADOT) field fabricated specimens	AZ 241-A	Ea	\$40.00
H. Flexural Strength of Concrete (with mold clean-up)	ASTM C293	Ea	\$77.00
I. Grout or Mortar Mix Design	N/A	Quote per Task	N/A
J. Portland Cement Concrete Mix Design	N/A	Quote per Task	N/A
K. Shotcrete Panel Testing, 3 Cores	ASTM C1140	Ea	\$165.00
L. Soil Cement Design	AZ 220	Quote per Task	N/A

**3.0 - Aggregate Testing**

A. Aggregate Durability Index, Coarse	ASTM D3744, AASHTO T210	Ea	\$150.00
B. Aggregate Durability Index, Fine	ASTM D3744, AASHTO T210	Ea	\$145.00
C. Aggregate Durability Index, Intermediate	ASTM D3744, AASHTO T210	Ea	\$150.00
D. Artificial Crushing	N/A	Ea	\$55 Per Hour
E. Clay Lumps and Friable Particles	ASTM C142, AASHTO T112	Ea	\$102.00
F. Flakiness Index of Aggregate	ARIZ 233	Ea	\$105.00
G. Flat and Elongated Particles (per screen size)	ASTM D4791	Ea	\$105.00
H. Fractured Faces	ARIZ 212, FLH507	Ea	\$88.00
I. L.A. Abrasion of Coarse Aggregate	ASTM C131, AASHTO T96	Ea	\$158.00
J. Percent Carbonates in Aggregate	ARIZ 238	Ea	\$132.00
K. Sand Equivalent	ASTM D2419, AASHTO T176	Ea	\$83.00
L. Sieve Analysis, Coarse	ASTM C136, AASHTO T27, ARIZ 201	Ea	\$67.00
M. Sieve Analysis, Coarse and Fine, Washed	ASTM T27, ARIZ 201	Ea	\$92.00
N. Sieve Analysis, Fine, Washed	ASTM C136, AASHTO T27, ARIZ 201	Ea	\$62.00
O. Soundness of Aggregate by Use of Sodium (Magnesium) Sulfate	ASTM C88, AASHTO T104	Ea	\$250.00
P. Specific Gravity and Absorption of Coarse Aggregate	ASTM C127, AASHTO T85	Ea	\$77.00
Q. Specific Gravity and Absorption of Fine Aggregate	ASTM C128, AASHTO T84, ARIZ 211	Ea	\$103.00
R. Uncompacted Void Content	ARIZ 247, & FHWA & AASHTO	Ea	\$105.00
S. Unit Weight and Voids in Aggregate	ASTM C29, AASHTO T19	Ea	\$72.00

**4.0 - Soils Testing**

A. Collapse Potential of Soils	ASTM D5333	Ea	\$115.00
B. Consolidation (no time rate of consolidation)	ASTM D2435, AASHTO T216	Ea	\$195.00
C. Direct Shear (3-pt, in situ)	ASTM D3080	Ea	\$370.00
D. Hydrometer Analysis (w/specific gravity)	ASTM D442, AASHTO T88	Ea	\$180.00
E. Natural Soil Moisture Content	ASTM D2216, AASHTO T265	Ea	\$19.00
F. One-Dimensional Expansion (Modified UBC) remolded	ASTM D4546	Ea	\$117.00
G. pH and Minimum Resistivity of Soils and Aggregates	ARIZ 236	Ea	\$113.00
H. Plasticity Index	ASTM D4318, AASHTO T89/90	Ea	\$81.00
I. Plasticity Index (Wet Prep)	ASTM D4318, AASHTO T89/90	Ea	\$118.00
J. Proctor Modified (Method A)	ASTM D1557, AASHTO T180	Ea	\$135.00
K. Proctor Standard (Method A)	ASTM D698, AASHTO T99, ARIZ 225/226	Ea	\$125.00
L. R-Value	ASTM D2544, AASHTO T190, CAL 301	Ea	\$308.00
M. California Bearing Ratio (CBR) with Modified Proctor	ASTM D1883, AASHTO T193	Ea	\$495.00
N. California Bearing Ratio (CBR) with Standard Proctor	ASTM D1883, AASHTO T193	Ea	\$475.00
O. California Bearing Ratio (CBR), 1 Point with Proctor	ASTM D1883, AASHTO T193	Ea	\$283.00
P. Sieve Analysis, Coarse	ASTM C136 AASHTO T27, ARIZ 201	Ea	\$67.00
Q. Sieve Analysis, Coarse and Fine, Washed	ASTM C136, AASHTO T27, ARIZ 201	Ea	\$92.00
R. Sieve Analysis, Fine, Washed	ASTM C136, AASHTO T27, ARIZ 201	Ea	\$67.00
S. Soil Specific Gravity	ASTM D284, AASHTO T100	Ea	\$76.00
T. Soluble Sulfate and Chloride	N/A	Ea	\$83.00
U. Soil Unit Weight (Undisturbed Sample) with Moisture Content	ASTM C29, AASHTO T10	Ea	\$28.00



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Ninyo & Moore Geotechnical & Environmental Sciences Consultants, an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Geotechnical Engineering Services; and Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**



1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Ninyo & Moore Geotechnical & Environmental Sciences Consultants  
3202 E. Harbour Dr.  
Phoenix, AZ 85034  
Attn: Steven Nowaczyk  
Email: [snowaczyk@ninyoandmoore.com](mailto:snowaczyk@ninyoandmoore.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393



14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

*Steven D. Nowaczyk*

\_\_\_\_\_  
Steve Nowaczyk, Contract Manager/Principal Engineer  
Ninyo & Moore Geotechnical & Environmental Sciences Consultants

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$\_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]



**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Geotechnical Engineering**

Firm Name: Ninyo & Moore Geotechnical & Environmental Sciences Consultants

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal Engineer/Geologist/Environmental Scientist	\$ 65.45	\$ 98.18	\$ 16.36	\$ 180.00
2	Senior Engineer/Geologist/Environmental Scientist	\$ 54.55	\$ 81.82	\$ 13.64	\$ 150.00
3	Senior Project Engineer/Geologist/Environmental Scientist	\$ 50.91	\$ 76.36	\$ 12.73	\$ 140.00
4	Project Engineer/Geologist/Environmental Scientist	\$ 43.64	\$ 65.45	\$ 10.91	\$ 120.00
5	Senior Staff Engineer/Geologist/Environmental Scientist	\$ 41.82	\$ 62.73	\$ 10.45	\$ 115.00
6	Staff Engineer/Geologist/Environmental Scientist	\$ 40.00	\$ 60.00	\$ 10.00	\$ 110.00
7	GIS Analyst	\$ 36.36	\$ 54.55	\$ 9.09	\$ 100.00
8	Technical Illustrator/CAD Operator	\$ 27.27	\$ 40.91	\$ 6.82	\$ 75.00
9	Geotechnical/Environmental/Assistant	\$ 20.00	\$ 30.00	\$ 5.00	\$ 55.00
10	Information Specialist	\$ 20.00	\$ 30.00	\$ 5.00	\$ 55.00
11	Data Processor	\$ 20.00	\$ 30.00	\$ 5.00	\$ 55.00
12	Accountant	\$ 20.00	\$ 30.00	\$ 5.00	\$ 55.00
13	Certified Asbestos Consultant, Lead Inspector/Assessor, Lead Project Monitor	\$ 50.91	\$ 76.36	\$ 12.73	\$ 140.00
14	Certified Industrial Hygienist	\$ 65.45	\$ 98.18	\$ 16.36	\$ 180.00
15	Field Operations Manager	\$ 36.36	\$ 54.55	\$ 9.09	\$ 100.00
16	Supervisory Technician	\$ 27.27	\$ 40.91	\$ 6.82	\$ 75.00
17	Senior Technician	\$ 27.27	\$ 40.91	\$ 6.82	\$ 75.00
18	Technician	\$ 25.45	\$ 38.18	\$ 6.36	\$ 70.00
19	ACI Concrete Technician	\$ 25.45	\$ 38.18	\$ 6.36	\$ 70.00
20	Deputy Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
21	Reinforced Concrete, Special Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
22	Prestressed Concrete, Special Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
23	Reinforced Masonry, Special Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
24	Structural Steel/Welding, Special Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
25	Fireproofing, Special Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
26	Concrete/Asphalt Batch Plant Inspector	\$ 29.09	\$ 43.64	\$ 7.27	\$ 80.00
27	Nondestructive Testing Technician	\$ 30.91	\$ 46.36	\$ 7.73	\$ 85.00
28					
29					
30					
31					
32					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Speedie & Associates, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Geotechnical Engineering Services; and Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,



design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: SHolcomb@dickinsonwright.com

Consultant: Speedie & Associates, Inc.  
3331 E. Wood St.  
Phoenix, AZ 85040  
Attn: Greg Creaser  
Email: [gcreaser@speedie.net](mailto:gcreaser@speedie.net)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Gregg A. Creaser, P.E., President/CEO  
Speedie & Associates, Inc.



**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

---

**PROFESSIONAL PROJECT TASK ORDER**

*Title of project*

**Project Task Order No.   01    
Contract No. \_\_\_\_\_  
Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek  
Project Manager:  
Telephone:  
Fax:  
E-mail:**

**CONSULTANT:**

**Firm Name  
Address  
Arizona Registration No.  
Federal Tax ID No.:  
Design Professional Representative:  
Telephone:  
Fax:  
E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.





RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Geotechnical Engineering**

**Firm Name: Speedie & Associates, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 84.13	\$ 126.20	\$ 21.03	\$ 231.37
2	Senior Engineer / PE	\$ 46.39	\$ 69.59	\$ 11.60	\$ 127.58
3	Project Manager	\$ 37.50	\$ 56.25	\$ 9.38	\$ 103.13
4	Staff Engineer/Geologist	\$ 37.02	\$ 55.53	\$ 9.26	\$ 101.81
5	Administrative	\$ 20.00	\$ 30.00	\$ 5.00	\$ 55.00
6	Field Technician (ATTI, ACI)	\$21.00	\$31.50	\$5.25	\$57.75
7	Special Inspector	\$29.00	\$43.50	\$7.25	\$79.75

**REIMBURSABLE EXPENSES**

Light Truck Mileage Rate: \$0.50 per mile

The following items are reimbursable to the extent of actual expenses plus 25%:

1. Transportation, lodging and subsistence for out of town travel
2. Special mailings and shipping charges
3. Special materials and equipment unique to the project
4. Duplication or reprinting/copying reports

**TEST BORINGS AND FIELD INVESTIGATIONS**

On projects requiring test borings, test pits, or other explorations, the services of reputable contractors to perform such work shall be obtained.

**SUBCONTRACTORS/SUBCONSULTANTS CHARGES**

Any charges for subcontractors/subconsultants are subject to a 25% handling fee if invoiced by Speedie & Associates or such charges can be directly paid by the CLIENT.

RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Geotechnical Engineering**

**Firm Name: Speedie & Associates, Inc.**

**Laboratory Test Costs**

LABORATORY TEST	BILLABLE RATE
Proctor, 5 Point (Standard)	115.00/EA
Proctor, 5 Point (Modified)	120.00/EA
Swell Test	100.00/EA
R-Value, 3 points	300.00/Set
CBR, 3 Points	500.00/Set
Plasticity Index (Atterberg Limits) (Dry)	55.00/EA
Plasticity Index (Atterberg Limits) (Wet)	135.00/EA
Consolidation	120.00/EA
Direct Shear (Set of 3)	450.00/Set
Lab Moisture	20.00/EA
Sieve Analysis (Wash Gradation for Fines Only)	55.00/EA
Sieve Analysis (Gradation Coarse and Fine)	75.00/EA
Sand Equivalent, 3 points	90.00/Set
Minus 200 Fraction	55.00/EA
pH	30.00 EA
Concrete Beam Modulus of Rupture	40.00/EA
Compression, Concrete/Mortar/Grout	16.00/EA

Ignition/Gradation	150.00/EA
Marshall Test w/Stability & Density (Set of 3)	140.00/Set
Rice Test	125.00/EA
Resistivity/Lab (Box)	70.00/EA
Permeability (Remolded) Granular	250.00/EA
Permeability (Remolded) Fine Grained	250.00/EA
Permeability (Flex-wall)	250.00/EA
Specific Gravity (Coarse Aggregates)	70.00/EA
Specific Gravity (Fine Aggregates)	80.00/EA
Gyratory with Density	200.00/EA
Alkali-Silica Reactivity (ASR) ASTM C1260	450.00/Set
Alkali-Silica Reactivity (ASR) ASTM C1567	450.00/Set
Alkali-Silica Reactivity (ASR) ASTM C1293	650.00/Set
Termiticide	368.50/EA
Core Thickness	10.00/EA
Core Density	20.00/EA
Soluble Sulfates	40.00/EA
Chlorides	40.00/EA



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF A ONE-YEAR ON-CALL PROFESSIONAL SERVICES CONTRACTS FOR ROADWAY IMPROVEMENT PROJECTS WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH EPS GROUP, INC.; KIMLEY-HORN AND ASSOCIATES; RITTOCH-POWELL AND ASSOCIATES; STANLEY CONSULTING; STANTEC; AND TY LIN INTERNATIONAL.

**DATE:** February 16, 2022

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**Suggested Action:**

To approve a one-year On-Call Professional Services contract for Roadway Improvement Projects, with up to four possible one-year renewals, with EPS Group, Inc.; Kimley-Horn and Associates; Ritoch-Powell and Associates; Stanley Consulting; Stantec; and TY Lin International.

**Relevant Council Goal(s):**

Superior Infrastructure - Capital Improvement Program

**Discussion:**

The on-call list for Roadway Improvement Projects is one of a series of on-call lists that staff is developing in order to provide more efficient and effective delivery of our Capital Improvement Program. The on-call list will save considerable time (minimum 4-6 weeks) hiring consultants to handle roadway project design needs that arise throughout the course of a project. All consultants have gone through an arduous selection process, are highly qualified to do the work, and met the Town's competitive pricing requirements. On-call lists are identified as a best practice for effective project management (Best Practices in Project Delivery, National Cooperative Highway Research Program, 2009).

On September 20, 2021, the Town issued a (RFQ) No. 22-011 for On-Call Professional Services. On October 26, 2021, staff received 19 proposals in response to the Roadway Improvement Projects portion of this RFQ. The selection and evaluation process was conducted in accordance with Town policies and procedures and administered by Purchasing staff. The proposals were reviewed by a three-member evaluation committee consisting of representatives from the CIP Department. The Town recommends awarding contracts to the six (6) highest scored proposals.

Annual expenditures under this contract cannot be determined in advance since services will be placed on an as-needed basis, according to the contract terms. The Request for Qualifications did not guarantee the awarded Consultants a contract amount; it stated that services would be requested on an as-needed basis. The contracts with the Consultants are for a one-year period with an option to renew for four additional one-year periods.

**Fiscal Impact:**

The award of these contracts does not explicitly obligate any dollar amount, but allows for the Town to procure work on an as-needed basis with the contractors designated. There is no fiscal impact until the on-call services are needed for Roadway Improvement Projects, at which time any project orders over \$25,000 will be presented to Council for approval, unless funding has already been approved under a Delegation Resolution. Project orders under \$25,000 will still only require Town Manager approval.

**Alternatives:**

Town Council could direct staff to go through the selection/bidding process each time a service is needed. This would add, cumulatively, significant time to each project as the selection time per service needed is 4-6 weeks.

**Attachment(s):**

1. [ON-CALL CONTRACTS-ROADWAY IMPROVEMENTS](#)

# ATTACHMENT 1

On-Call Professional Services Contracts for  
Roadway Improvement Projects

# Contract/Agreement Review Cover Sheet

INSTRUCTIONS: Legal Review is required prior to submittal for Town Council and/or Town Manager approval. Public Works Director review and approval is required on all Public Works and/or Construction and A&E projects. Real Estate review and approval is required on all Real Estate matters. Purchasing review is also required. Complete this form for all contracts/agreements/IGA's/change orders/work orders/proposals/MOU's and submit to the Purchasing office for review/approval routing. Be sure to attach a staff report and all supporting documents for review(s).

## ALLOW THREE WEEKS FOR THE REVIEW PROCESS

Document Type:	<input type="text" value="Contract"/>	Contact Person:	<input type="text" value="Lorina Gillette"/>
Council Date:	<input type="text" value="2/16/2022"/>	S.A.M. verification	<input checked="" type="checkbox"/>
Department Name:	<input type="text" value="CIP"/>		
Vendor/Contractor:	<input type="text" value="See Description"/>	Vendor ID#:	<input type="text"/>
Brief Description:	<input type="text" value="On-Call contracts for as needed Roadway Project Services from EPS Group, Kimley-Horn, Ritoch-Powell, Stanley Consultants, Stantec and TY Lin International."/>		
Terms of Contract:	Start: <input type="text" value="2/16/2022"/>	End:	<input type="text" value="2/15/2023"/>
\$ Amount or Not to Exceed:	<input type="text" value="NA"/>	Account Line Item #:	<input type="text"/>
Procurement Method:	<input type="text" value="RFQ 22-011 On-Call Professional Services"/>		

**Attachments:** \*Reference original contract number.

Check all that apply:

<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Cooperative Agreement	Original Contract # <input style="width: 100%;" type="text"/>	Cooperative Agreement # <input style="width: 100%;" type="text"/>	Change Order# Work Order # Project Order # <input style="width: 100%;" type="text"/>
<input type="checkbox"/> Staff Report	<input type="checkbox"/> IGA			
<input type="checkbox"/> Amendment	<input type="checkbox"/> *Change Order/Work Order No.			
<input type="checkbox"/> Easement				

**Approved:**

N/A	<input checked="" type="checkbox"/>	Real Estate: _____	Date: <input style="width: 100%;" type="text"/>
N/A	<input type="checkbox"/>	Dept Director: <u>Dave Lipinski</u> <small>Dave Lipinski (Dec 29, 2021 16:44 MST)</small>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input checked="" type="checkbox"/>	Dept Director: _____	Date: <input style="width: 100%;" type="text"/>
N/A	<input type="checkbox"/>	Purchasing: <u>Melissa Bauer</u>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input type="checkbox"/>	Town Attorney: <u>Todd A Baxter</u>	Date: <input style="width: 100%;" type="text"/>
N/A	<input checked="" type="checkbox"/>	Town Clerk: _____	Date: <input style="width: 100%;" type="text"/>



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**



## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and EPS Group, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Roadway Improvement Projects; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: EPS Group, Inc.  
1130 N. Alma School Rd. Ste. 120  
Mesa, AZ 85201  
Attn: Elijah Williams, PE  
Email: [Elijah.williams@epsgroupinc.com](mailto:Elijah.williams@epsgroupinc.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**



1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Greg Froehlich, Principal  
EPS Group, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek  
Project Manager:  
Telephone:  
Fax:  
E-mail:**

**CONSULTANT:**

**Firm Name  
Address  
Arizona Registration No.  
Federal Tax ID No.:  
Design Professional Representative:  
Telephone:  
Fax:  
E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed): \$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_





**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Roadway Projects**

**Firm Name: EPS Group**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 77.00	150%	10%	\$ 211.75
2	Project Manager	\$ 68.00	150%	10%	\$ 187.00
3	Project Engineer	\$ 51.00	150%	10%	\$ 140.25
4	Senior Engineer	\$ 57.00	150%	10%	\$ 156.75
5	Design Engineer	\$ 40.50	150%	10%	\$ 111.38
6	CAD Drafter	\$ 38.50	150%	10%	\$ 105.88
7	Landscape Architect	\$ 55.00	150%	10%	\$ 151.25
8	Senior Landscape Designer	\$ 43.00	150%	10%	\$ 118.25
9	Landscape Designer	\$ 32.50	150%	10%	\$ 89.38
10	Project Surveyor	\$ 47.00	150%	10%	\$ 129.25
11	Survey - 2 Man Crew	\$ 51.50	150%	10%	\$ 141.63
12	Survey Technician	\$ 35.00	150%	10%	\$ 96.25
13	Administrative	\$ 25.00	150%	10%	\$ 68.75
14					
15					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Kimley-Horn and Associates, Inc., a North Carolina corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Roadway Improvement Projects; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**



1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Kimley-Horn and Associates, Inc.  
7740 N. 16<sup>th</sup> St. Ste. 300  
Phoenix, AZ 85020  
Attn: Kim Carroll  
Email: [kim.carrol@kimley-horn.com](mailto:kim.carrol@kimley-horn.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393



14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

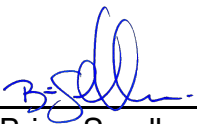
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Brian Smalkoski, Vice President  
Kimley-Horn and Associates, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Ritoch-Powell & Associates, an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Roadway Improvement Projects; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

- 1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task Order", as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.
- 1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.
- 1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.
2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.
3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.
4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.



### **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may

terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports, design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone

for whose acts the Consultant may be legally liable. It is the specific intention of the Parties that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Ritoch-Powell & Associates  
1001 N. Central Ave. Ste. 900  
Phoenix, AZ 85004  
Attn: Pete Hemingway  
Email: [phemingway@rpaeng.com](mailto:phemingway@rpaeng.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent

by email transmission may also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. **RECORDS AND AUDIT RIGHTS.** Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. **INDEPENDENT CONTRACTOR.** The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. **TAXES.** Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. **COMPLIANCE WITH LAW.** The Consultant specifically agrees and hereby

warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to



Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

## **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

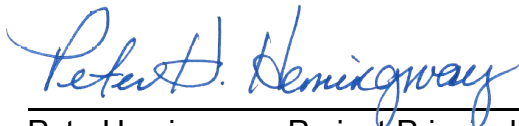
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Pete Hemingway, Project Principal  
Ritoch-Powell & Associates

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]



**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Roadway Projects**

**Firm Name: Ritoch-Powell & Associates**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	88.94	133.41	22.24	244.59
2	Project Manager	69.95	104.93	17.49	192.36
3	Resident Engineer (PE)	54.81	82.22	13.70	150.73
4	Staff Engineer	52.41	78.62	13.10	144.13
5	EIT	39.10	58.65	9.78	107.53
6	Construction Inspection Supervisor	52.88	79.32	13.22	145.42
7	Senior Construction Inspector	48.08	72.12	12.02	132.22
8	Inspector	35.26	52.89	8.82	96.97
9	Administrator	33.63	50.45	8.41	92.48
10					
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**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Stanley Consultants, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Roadway Improvement Projects; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

- 1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task Order", as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.
- 1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.
- 1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.
2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.
3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.
4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

### **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may

terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**



1 All documents including but not limited to data computation, studies, reports, design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone

for whose acts the Consultant may be legally liable. It is the specific intention of the Parties that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Stanley Consultants, Inc.  
3133 E. Camelback Rd. Ste. 100  
Phoenix, AZ 85016  
Attn: Steve Jimenez  
Email: [jimenezsteve@stanleygroup.com](mailto:jimenezsteve@stanleygroup.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent

by email transmission may also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. **RECORDS AND AUDIT RIGHTS.** Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. **INDEPENDENT CONTRACTOR.** The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. **TAXES.** Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. **COMPLIANCE WITH LAW.** The Consultant specifically agrees and hereby

warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to

Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

## **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Steve Jimenez, Project Principal  
Stanley Consultants, Inc.



**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek  
Project Manager:  
Telephone:  
Fax:  
E-mail:**

**CONSULTANT:**

**Firm Name  
Address  
Arizona Registration No.  
Federal Tax ID No.:  
Design Professional Representative:  
Telephone:  
Fax:  
E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed): \$XXXXXX**

1. \_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$\_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.





RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Roadway Projects**

**Firm Name: Stanley Consultants, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	108.12	162.18	27.03	297.33
2	Senior Project Manager	98.58	147.87	24.65	271.10
3	Project Manager	66.96	100.44	16.74	184.14
4	Senior Engineer	80.85	121.28	20.21	222.34
5	Engineer	58.72	88.08	14.68	161.48
6	Senior Designer	54.07	81.11	13.52	148.69
7	Designer	37.44	56.16	9.36	102.96
8	CADD Technician	25.14	37.71	6.29	69.14
9	Administrative	29.45	44.18	7.36	80.99
10					
11					
12					
13					
14					
15					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Stantec Consulting Services, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Roadway Improvement Projects; and

Consultant is qualified to perform the Services; and

The [*Mayor/Town Manager*] is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any



company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Stantec Consulting Services, Inc.  
3133 W. Frye Rd. Ste. 300  
Chandler, AZ 85226  
Attn: Robert Lemke  
Email: [Robert.lemke@stantec.com](mailto:Robert.lemke@stantec.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**



\_\_\_\_\_  
Robert Lemke, Principal  
Stantec Consulting Services, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed): \$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$\_\_\_\_\_ to





be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Roadway Projects**

**Firm Name: Stantec Consulting Services Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Project Principal	109.12	150%	10%	\$ 300.08
2	Senior Project Manager	83.68	150%	10%	\$ 230.12
3	Project Manager	59.43	150%	10%	\$ 163.43
4	Senior Project Engineer	76.32	150%	10%	\$ 209.88
5	Project Engineer	54.86	150%	10%	\$ 150.87
6	Engineer	48.32	150%	10%	\$ 132.88
7	Designer	34.63	150%	10%	\$ 95.23
8	CADD Technician	31.53	150%	10%	\$ 86.71
9	Senior Landscape Architect	71.99	150%	10%	\$ 197.97
10	Landscape Architect	61.79	150%	10%	\$ 169.92
11	Administrative	27.52	150%	10%	\$ 75.68
12					
13					
14					
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19					
20					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**



## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and T.Y. Lin International, an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Roadway Improvement Projects; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: T.Y. Lin International  
1475 N. Scottsdale Rd. Ste. 450  
Scottsdale, AZ 85257  
Attn: James Barr  
Email: [james.barr@tylin.com](mailto:james.barr@tylin.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**



1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
James Barr, Principal in Charge  
T.Y. Lin International

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_





**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Roadway Projects**

**Firm Name: TY Lin International**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 95.00	\$ 142.50	\$ 23.75	\$ 261.25
2	Senior Project Manager	\$ 80.00	\$ 120.00	\$ 20.00	\$ 220.00
3	Structural Engineer	\$ 75.00	\$ 112.50	\$ 18.75	\$ 206.25
4	Project Manager	\$ 65.00	\$ 97.50	\$ 16.25	\$ 178.75
5	Senior Project Engineer	\$ 60.00	\$ 90.00	\$ 15.00	\$ 165.00
6	Project Engineer	\$ 55.00	\$ 82.50	\$ 13.75	\$ 151.25
7	Design Engineer	\$ 50.00	\$ 75.00	\$ 12.50	\$ 137.50
8	Senior Designer	\$ 45.00	\$ 67.50	\$ 11.25	\$ 123.75
9	Designer	\$ 35.00	\$ 52.50	\$ 8.75	\$ 96.25
10	Administrative	\$ 25.00	\$ 37.50	\$ 6.25	\$ 68.75
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Roadway Projects**

**Firm Name: TY Lin International**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					



TOWN OF  
**QUEEN CREEK**  
ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL  
**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER  
**FROM:** DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR  
**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF A ONE-YEAR ON-CALL PROFESSIONAL SERVICES CONTRACT FOR TRAFFIC ENGINEERING SERVICES, WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH EPS GROUP, INC.; KIMLEY-HORN AND ASSOCIATES; LEE ENGINEERING; WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC.; Y2K ENGINEERING, LLC.  
**DATE:** February 16, 2022

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**Suggested Action:**

Staff recommends the approval of a one-year On-Call Professional Services contract for Traffic Engineering Services, with up to four possible one-year renewals, with EPS Group, Inc.; Kimley-Horn and Associates; Lee Engineering; Wood Environment & Infrastructure Solutions, Inc.; Y2K Engineering, LLC.

**Relevant Council Goal(s):**

Superior Infrastructure - Capital Improvement Program

**Discussion:**

The on-call list for Traffic Engineering Services is one of a series of on-call lists that staff is developing in order to provide more efficient and effective delivery of our Capital Improvement Program. The on-call list will save considerable time (minimum 4-6 weeks) hiring consultants to handle traffic engineering service needs that arise throughout the course of a project. All consultants have gone through an arduous selection process, are highly qualified to do the work, and met the Town's competitive pricing requirements. On-call lists are identified as a best practice for effective project management (Best Practices in Project Delivery, National Cooperative Highway Research Program, 2009).

On September 20, 2021, the Town issued a (RFQ) No. 22-011 for On-Call Professional Services. On October 26, 2021, staff received 16 proposals in response to the Traffic Engineering portion of this RFQ. The selection and evaluation process was conducted in accordance with Town policies and procedures and administered by Purchasing staff. The proposals were reviewed by a three-member evaluation committee consisting of representatives from the CIP Department. The Town recommends awarding contracts to the five (5) highest scored proposals.

Annual expenditures under this contract cannot be determined in advance since services will be placed on an as-needed basis, according to the contract terms. The Request for Qualifications did not guarantee the awarded Consultants a contract amount; it stated that services would be requested on an as-needed basis. The contracts with the Consultants are for a one-year period with an option to renew for four additional one-year periods.

**Fiscal Impact:**

The award of these contracts does not explicitly obligate any dollar amount, but allows for the Town to procure work on an as-needed basis with the contractors designated. There is no fiscal impact until the on-call services are needed for Traffic Engineering Services, at which time any project orders over \$25,000 will be presented to Council for approval, unless funding has already been approved under a Delegation Resolution. Project orders under \$25,000 will still only require Town Manager approval.

**Alternatives:**

Town Council could direct staff to go through the selection/bidding process each time a service is needed. This would add, cumulatively, significant time to each project as the selection time per service needed is 4-6 weeks.

**Attachment(s):**

1. [CONTRACTS TRAFFIC ENGINEERING](#)



# ATTACHMENT 1

On-Call Professional Services Contracts for  
Traffic Engineering Services

# Contract/Agreement Review Cover Sheet

INSTRUCTIONS: Legal Review is required prior to submittal for Town Council and/or Town Manager approval. Public Works Director review and approval is required on all Public Works and/or Construction and A&E projects. Real Estate review and approval is required on all Real Estate matters. Purchasing review is also required. Complete this form for all contracts/agreements/IGA's/change orders/work orders/proposals/MOU's and submit to the Purchasing office for review/approval routing. Be sure to attach a staff report and all supporting documents for review(s).

## ALLOW THREE WEEKS FOR THE REVIEW PROCESS

Document Type:	<input type="text" value="Contract"/>	Contact Person:	<input type="text" value="Lorina Gillette"/>
Council Date:	<input type="text" value="2/16/2022"/>	S.A.M. verification	<input checked="" type="checkbox"/>
Department Name:	<input type="text" value="CIP"/>		
Vendor/Contractor:	<input type="text" value="See Description"/>	Vendor ID#:	<input type="text"/>
Brief Description:	<input type="text" value="On-Call contracts for as needed Traffic Engineering Services from EPS Group, Kimley-Horn, Lee Engineering, Wood Environment and Infrastructure Solutions and Y2K Engineering"/>		
Terms of Contract:	Start: <input type="text" value="2/16/2022"/>	End:	<input type="text" value="2/15/2023"/>
\$ Amount or Not to Exceed:	<input type="text" value="NA"/>	Account Line Item #:	<input type="text"/>
Procurement Method:	<input type="text" value="RFQ 22-011 On-Call Professional Services"/>		

**Attachments:** \*Reference original contract number.

Check all that apply:

<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Cooperative Agreement	Original Contract #	Cooperative Agreement #	Change Order#
<input type="checkbox"/> Staff Report	<input type="checkbox"/> IGA			Work Order #
<input type="checkbox"/> Amendment	<input type="checkbox"/> *Change Order/Work Order No.			Project Order #
<input type="checkbox"/> Easement				<input type="text"/>

**Approved:**

N/A	<input checked="" type="checkbox"/>	Real Estate: _____	Date: <input type="text"/>
N/A	<input type="checkbox"/>	Dept Director: <u><i>Dave Lipinski</i></u> <small>Dave Lipinski (Dec 29, 2021 16:44 MST)</small>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input checked="" type="checkbox"/>	Dept Director: _____	Date: <input type="text"/>
N/A	<input type="checkbox"/>	Purchasing: <u><i>Melana Bauer</i></u>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input type="checkbox"/>	Town Attorney: <u><i>Todd A Baxter</i></u>	Date: <input type="text"/>
N/A	<input checked="" type="checkbox"/>	Town Clerk: _____	Date: <input type="text"/>



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and EPS Group, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Traffic Engineering Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties



that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: EPS Group, Inc.  
1130 N. Alma School Rd. Ste. 120  
Mesa, AZ 85201  
Attn: Elijah Williams  
Email: [Elijah.williams@epsgroupinc.com](mailto:Elijah.williams@epsgroupinc.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Greg Froehlich, PE, Principal  
EPS Group, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**





**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Traffic Engineering**

**Firm Name: EPS Group**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 77.00	150%	10%	\$ 211.75
2	Project Manager	\$ 61.50	150%	10%	\$ 169.13
3	Traffic Engineer	\$ 52.50	150%	10%	\$ 144.38
4	Engineer	\$ 45.00	150%	10%	\$ 123.75
5	Design Engineer	\$ 40.50	150%	10%	\$ 111.38
6	CAD Drafter	\$ 38.50	150%	10%	\$ 105.88
7	Project Surveyor	\$ 47.00	150%	10%	\$ 129.25
8	Survey - 2 Man Crew	\$ 51.50	150%	10%	\$ 141.63
9	Survey Technician	\$ 35.00	150%	10%	\$ 96.25
10	Administrative	\$ 25.00	150%	10%	\$ 68.75
11					
12					
13					
14					
15					





**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Kimley-Horn and Associates, Inc., a North Carolina corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Traffic Engineering Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Kimley-Horn and Associates, Inc.  
7740 N. 16<sup>th</sup> St. Ste. 300  
Phoenix, AZ 85020  
Attn: Thomas McCullough  
Email: [Thomas.mccullough@kimley-horn.com](mailto:Thomas.mccullough@kimley-horn.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.



This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

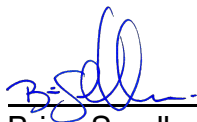
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Brian Smalkoski, Vice President  
Kimley-Horn and Associates, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.





**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Lee Engineering, an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Traffic Engineering Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Lee Engineering  
3610 N. 44<sup>th</sup> St. Ste. 100  
Phoenix, AZ 85018  
Attn: Dave Bruggeman  
Email: [dbruggeman@lee-eng.com](mailto:dbruggeman@lee-eng.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.



This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Dave Bruggeman, Principal  
Lee Engineering

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_





**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Traffic Engineering**

**Firm Name: Lee Engineering, LLC**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$93.15	\$139.73	\$23.29	\$256.16
2	Principal/Project Manager	\$93.15	\$139.73	\$23.29	\$256.16
3	Senior Project Manager	\$77.63	\$116.45	\$19.41	\$213.48
4	Project Manager	\$58.72	\$88.08	\$14.68	\$161.48
5	Senior Engineer	\$53.74	\$80.61	\$13.44	\$147.79
6	Project Engineer	\$46.58	\$69.87	\$11.65	\$128.10
7	Engineering Designer	\$34.83	\$52.25	\$8.71	\$95.78
8	Senior ITS Designer	\$62.10	\$93.15	\$15.53	\$170.78
9					

Lee Engineering's FAR Audited OH rate is 184.88%. 150% used in rate calculations.



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Wood Environment & Infrastructure Solutions, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Traffic Engineering Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task



Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Wood Environment & Infrastructure Solutions, Inc.  
4600 E. Washington St. Ste. 600  
Phoenix, AZ 85034  
Attn: Anita Johari  
Email: [anita.johari@woodplc.com](mailto:anita.johari@woodplc.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply



with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

\_\_\_\_\_  
Richard D. Yano, Project Principal  
Wood Environment & Infrastructure Solutions, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**





**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Traffic Engineering**

**Firm Name: Wood Environment & Infrastructure Solutions, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$80.00	\$120.00	\$20.00	\$220.00
2	Senior Project Manager	\$75.00	\$112.50	\$18.75	\$206.25
3	Senior Project Engineer	\$60.00	\$90.00	\$15.00	\$165.00
4	Project Manager	\$54.00	\$81.00	\$13.50	\$148.50
5	Design Leader	\$55.00	\$82.50	\$13.75	\$151.25
6	Engineer	\$50.00	\$75.00	\$12.50	\$137.50
7	Senior Designer	\$42.00	\$63.00	\$10.50	\$115.50
8	Designer	\$35.00	\$52.50	\$8.75	\$96.25
9	EIT	\$30.00	\$45.00	\$7.50	\$82.50
10	Admin/Clerical	\$30.00	\$45.00	\$7.50	\$82.50
11					
12					
13					
14					
15					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Y2K Engineering, LLC, an Arizona limited liability company ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Traffic Engineering Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability



for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or loses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: SHolcomb@dickinsonwright.com

Consultant: Y2K Engineering, LLC  
1921 S. Alma School Rd. Ste. 204  
Mesa, AZ 85210  
Attn: Yung Koprowski  
Email: [ykoprowski@y2keng.com](mailto:ykoprowski@y2keng.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.



In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Yung Koprowski, Principal  
Y2K Engineering, LLC

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible



for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Traffic Engineering**

**Firm Name: Y2K Engineering, LLC.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 74.00	\$ 111.00	\$ 18.50	\$ 203.50
2	Sr. Project Manager	\$ 68.00	\$ 102.00	\$ 17.00	\$ 187.00
3	Engineer III	\$ 68.00	\$ 102.00	\$ 17.00	\$ 187.00
4	Project Manager	\$ 60.00	\$ 90.00	\$ 15.00	\$ 165.00
5	Engineer II	\$ 53.00	\$ 79.50	\$ 13.25	\$ 145.75
6	Engineer I	\$ 43.00	\$ 64.50	\$ 10.75	\$ 118.25
7	Transportation Planner III	\$ 60.00	\$ 90.00	\$ 15.00	\$ 165.00
8	Designer III	\$ 40.00	\$ 60.00	\$ 10.00	\$ 110.00
9	Designer II	\$ 34.00	\$ 51.00	\$ 8.50	\$ 93.50
10	Designer I	\$ 29.00	\$ 43.50	\$ 7.25	\$ 79.75
11	Technician	\$ 20.00	\$ 30.00	\$ 5.00	\$ 55.00
12	Administrative	\$ 24.00	\$ 36.00	\$ 6.00	\$ 66.00
13					
14					
15					
16					



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Traffic Engineering**

**Firm Name: Y2K Engineering, LLC.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Traffic Engineering**

---

**Firm Name: Y2K Engineering, LLC.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
33					
34					



TOWN OF  
**QUEEN CREEK**  
ARIZONA

8.J

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER**

**FROM: DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF A ONE-YEAR ON-CALL PROFESSIONAL SERVICES CONTRACTS FOR TRANSPORTATION PLANNING SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH BURGESS & NIPLE; KIMLEY-HORN AND ASSOCIATES; MICHAEL BAKER INTERNATIONAL; AND WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC.**

**DATE: February 16, 2022**

---

**Suggested Action:**

Staff recommends the approval of a one-year On-Call Professional Services contract for Transportation Planning Services, with up to four possible one-year renewals, with Burgess & Niple; Kimley-Horn and Associates; Michael Baker International; and Wood Environment & Infrastructure Solutions, Inc.

**Relevant Council Goal(s):**

Superior Infrastructure - Capital Improvement Program

**Discussion:**

The on-call list for Transportation Planning Services is one of a series of on-call lists that staff is developing in order to provide more efficient and effective delivery of our Capital Improvement Program. The on-call list will save considerable time (minimum 4-6 weeks) hiring consultants to handle transportation planning needs that arise throughout the course of a project. All consultants have gone through an arduous selection process, are highly qualified to do the work, and met the Town's competitive pricing requirements. On-call lists are identified as a best practice for effective project management (Best Practices in Project Delivery, National Cooperative Highway Research Program, 2009).

On September 20, 2021, the Town issued a (RFQ) No. 22-011 for On-Call Professional Services. On October 26, 2021, staff received 10 proposals in response to the Transportation Planning portion of this RFQ. The selection and evaluation process was conducted in accordance with Town policies and procedures and administered by Purchasing staff. The proposals were reviewed by a three-member evaluation committee consisting of representatives from the CIP Department. The Town recommends awarding contracts to the four (4) highest scored proposals.

Annual expenditures under this contract cannot be determined in advance since services will be placed on an as-needed basis, according to the contract terms. The Request for Qualifications did not guarantee the awarded Consultants a contract amount; it stated that services would be requested on an as-needed basis. The contracts with the Consultants are for a one-year period with an option to renew for four additional one-year periods.

**Fiscal Impact:**

The award of these contracts does not explicitly obligate any dollar amount, but allows for the Town to procure work on an as-needed basis with the contractors designated. There is no fiscal impact until the on-call services are needed for Transportation Planning Services, at which time any project orders over \$25,000 will be presented to Council for approval, unless funding has already been approved under a Delegation Resolution. Project orders under \$25,000 will still only require Town Manager approval.

**Alternatives:**

Town Council could direct staff to go through the selection/bidding process each time a service is needed. This would add, cumulatively, significant time to each project as the selection time per service needed is 4-6 weeks.

**Attachment(s):**

1. [ON-CALL CONTRACTS TRANSPORTATION PLANNING](#)

# ATTACHMENT 1

On-Call Professional Services Contracts for  
Transportation Planning Services

# Contract/Agreement Review Cover Sheet

**INSTRUCTIONS:** Legal Review is required prior to submittal for Town Council and/or Town Manager approval. Public Works Director review and approval is required on all Public Works and/or Construction and A&E projects. Real Estate review and approval is required on all Real Estate matters. Purchasing review is also required. Complete this form for all contracts/agreements/IGA's/change orders/work orders/proposals/MOU's and submit to the Purchasing office for review/approval routing. Be sure to attach a staff report and all supporting documents for review(s).

## ALLOW THREE WEEKS FOR THE REVIEW PROCESS

Document Type:	<input type="text" value="Contract"/>	Contact Person:	<input type="text" value="Lorina Gillette"/>
Council Date:	<input type="text" value="2/16/2022"/>	S.A.M. verification	<input checked="" type="checkbox"/>
Department Name:	<input type="text" value="CIP"/>		
Vendor/Contractor:	<input type="text" value="See Description"/>	Vendor ID#:	<input type="text"/>
Brief Description:	<input type="text" value="On-Call contracts for as needed Transportation Planning Services from Burgess &amp; Niple, Kimley-Horn, Michael Baker International and Wood Environment and Infrastructure Solutions."/>		
Terms of Contract:	Start: <input type="text" value="2/16/2022"/>	End:	<input type="text" value="2/15/2023"/>
\$ Amount or Not to Exceed:	<input type="text" value="NA"/>	Account Line Item #:	<input type="text"/>
Procurement Method:	<input type="text" value="RFQ 22-011 On-Call Professional Services"/>		

**Attachments:** \*Reference original contract number.

Check all that apply:

<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Cooperative Agreement	Original Contract #	Cooperative Agreement #	Change Order#
<input type="checkbox"/> Staff Report	<input type="checkbox"/> IGA	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Amendment	<input type="checkbox"/> *Change Order/Work Order No.			
<input type="checkbox"/> Easement				

**Approved:**

N/A	<input checked="" type="checkbox"/>	Real Estate: _____	Date: <input type="text"/>
N/A	<input type="checkbox"/>	Dept Director: <u>Dave Lipinski</u> <small>Dave Lipinski (Dec 29, 2021 16:45 MST)</small>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input checked="" type="checkbox"/>	Dept Director: _____	Date: <input type="text"/>
N/A	<input type="checkbox"/>	Purchasing: <u>Melina Bauer</u>	Date: <input type="text" value="Dec 29, 2021"/>
N/A	<input type="checkbox"/>	Town Attorney: <u>Todd A Baxter</u>	Date: <input type="text"/>
N/A	<input checked="" type="checkbox"/>	Town Clerk: _____	Date: <input type="text"/>





**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Burgess & Niple, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Transportation Planning Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Burgess & Niple, Inc.  
1500 N. Priest Dr. Ste. 102  
Tempe, AZ 85281  
Attn: Dana Biscan  
Email: [dana.biscan@burgessniple.com](mailto:dana.biscan@burgessniple.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.



This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager


ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Jason Pagnard, Vice President  
Burgess & Niple

**EXHIBIT A**

**PROJECT TASK ORDER FORM**





be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_





**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Transportation Planning**

**Firm Name: Burgess & Niple, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$ 96.75	1.5	1.1	\$ 266.06
2	Sr. Project Manager	\$ 78.00	1.5	1.1	\$ 214.50
3	Project Manager	\$ 69.00	1.5	1.1	\$ 189.75
4	Sr. Engineer	\$ 75.00	1.5	1.1	\$ 206.25
5	Engineer 4	\$ 64.75	1.5	1.1	\$ 178.06
6	Engineer 3	\$ 55.25	1.5	1.1	\$ 151.94
7	Engineer 2	\$ 48.00	1.5	1.1	\$ 132.00
8	Engineer 1	\$ 43.75	1.5	1.1	\$ 120.31
9	Senior Planner	\$ 51.50	1.5	1.1	\$ 141.63
10	Planner 2	\$ 42.75	1.5	1.1	\$ 117.56
11	Planner 1	\$ 34.50	1.5	1.1	\$ 94.88
12	Contract Administrator	\$ 40.00	1.5	1.1	\$ 110.00
13		\$ -			
14		\$ -			
15		\$ -			
16		\$ -			



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Transportation Planning**

**Firm Name: Burgess & Niple, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
17		\$ -			
18		\$ -			
19		\$ -			
20		\$ -			
21		\$ -			
22		\$ -			
23		\$ -			
24		\$ -			
25		\$ -			
26		\$ -			
27		\$ -			
28		\$ -			
29		\$ -			
30		\$ -			
31		\$ -			



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**



## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Kimley-Horn and Associates, Inc., a North Carolina corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Transportation Planning Services; and  
Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

#### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

#### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Kimley-Horn and Associates, Inc.  
1001 W. Southern Ave. Ste. 131  
Mesa, AZ 85210  
Attn: Michael Grandy  
Email: [Michael.grandy@kimley-horn.com](mailto:Michael.grandy@kimley-horn.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**



1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

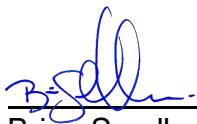
ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

  
\_\_\_\_\_  
Brian Smalkoski, Vice President  
Kimley-Horn and Associates, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**



## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Michael Baker International, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Transportation Planning Services; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated (*October 26, 2021*); and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task

Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Michael Baker International, Inc.  
2929 N. Central Ave. Ste. 800  
Phoenix, AZ 85012  
Attn: Kevin Kugler  
Email: [kkugler@mbakerintl.com](mailto:kkugler@mbakerintl.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**



1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply

with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

*Kevin Kugler*  
\_\_\_\_\_  
Kevin Kugler, Contract Manager  
Michael Baker International Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_





**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**



**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Transportation Planning**

**Firm Name: Michael Baker International**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Project Manager	\$82.00	150%	10%	\$225
2	Sr. Transportation Planner	\$64	150%	10%	\$176
3	Transportation Planner III	\$49	150%	10%	\$134.75
4	Transportation Planner II	\$42	150%	10%	\$115.50
5	Transportation Planner I	\$35	150%	10%	\$96.25
6	Sr. Civil Engineer	\$72	150%	10%	\$198
7	Civil Engineer	\$57	150%	10%	\$156.75
8	Traffic Engineer	\$55	150%	10%	\$151.25
9	Engineering Associate	\$39	150%	10%	\$107.25
10	Environmental Engineer	\$58	150%	10%	\$159.50
11	GIS Developer/Sr. Modeler	\$48	150%	10%	\$132
12	GIS Analyst/Designer	\$35	150%	10%	\$96.25
13	Public Engagement Specialist	\$49	150%	10%	\$134.75
14	Technician/Drafter	\$33	150%	10%	\$90.75
15	Administrative Assistant	\$32	150%	10%	\$88
16					
17					
18					
19					
20					



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Transportation Planning**

**Firm Name: Michael Baker International**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					



**TOWN OF QUEEN CREEK  
22358 S. ELLSWORTH ROAD  
QUEEN CREEK, AZ 86004  
(480) 358-3000  
[www.queencreek.org](http://www.queencreek.org)**

**PROFESSIONAL SERVICES**

**MASTER CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

## TOWN OF QUEEN CREEK

### PROFESSIONAL SERVICES MASTER CONTRACT

THIS MASTER CONTRACT is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Wood Environment & Infrastructure Solutions, Inc., an Arizona corporation ("Consultant"). Town and Consultant may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

#### RECITALS

The Town wishes to enter into a contract for Transportation Planning; and

Consultant is qualified to perform the Services; and

The Mayor is authorized and empowered by the Town Code to execute contracts for professional services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

#### AGREEMENTS

##### ARTICLE 1 – CONTRACT DOCUMENTS

###### 1.1 Contract Documents:

The Contract between Town and Consultant for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. General Conditions, dated September, 2018, and General Conditions Appendices, incorporated by reference;
3. Project Task Order in the form attached hereto as Exhibit A;
4. Exhibit B - Insurance Requirements- attached;
5. The Request for Qualifications (RFQ) issued by Town for this Master Contract;
6. The Statement of Qualifications (SOQ) submitted by Consultant dated *(October 26, 2021)*; and
7. Exhibit C - Negotiated Fee Schedule

1.2 Master Agreement: This is a Master Contract providing the basis by which Town may issue, and Consultant may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Town and Consultant, unless expressly excluded, in writing, in such contract or agreement.

1.2.1 Authorization by Town to perform Services and agreement by Consultant to perform specific Services shall be made by separate "Project Task



Order”, as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Consultant and shall be applicable for any and all Services performed by Consultant for Town and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Consultant and Town. This Master Contract does not obligate or require Town to offer any Project Task Order to Consultant, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Town and Consultant.

1.2.2 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Town entering into this Master Contract, and each Project Task Order, with Consultant.

1.3 Issuance of Project Task Orders: Town may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Consultant to perform the Services specified in the Project Task Order. Upon acceptance by the Consultant, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

## **ARTICLE 2. FEES**

1. The amount paid to Consultant under this Contract, including reimbursable expenses, is on an as needed basis.

2. Town shall pay the Consultant for the Services as set forth in the Project Task Order in accordance with Exhibit C-Fee Schedule of this Master Contract.

3. Monthly payments may be made to Consultant on the basis of a progress report prepared and submitted by Consultant for the work completed through the last day of the preceding calendar month. The Town reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall include with each invoice delivered to the Town such documentation as the Contract Administrator may require to make its determination of work performed and payment due and any such determination by the Town shall be for the purpose of payment and shall not be deemed an approval of any portion of the Services or a waiver of any of the Town's rights hereunder.

4. If for any reason the Consultant fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Consultant such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Consultant is agreed to by the parties in writing, or is determined by a court of competent jurisdiction.

## **ARTICLE 3. TERM OF CONTRACT**

1. The term of the Contract shall commence on the date of award and shall continue for a period of One (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for Four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed Five (5) years. Any of the one (1) year Contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

2. Time is of the essence of this Master Contract and each Project Task Order. Consultant shall complete all Services within the schedule set forth in each individual Project Task Order.

#### **ARTICLE 4. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Consultant.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Consultant shall immediately deliver to the Town any and all documents or work product generated by the Consultant under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Consultant shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. Upon receipt of notice of termination, Consultant shall apprise the Town of the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Contract Administrator for evaluation.

5. The Consultant shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by the Town. This fee shall be in an amount to be mutually agreed-upon by the Consultant and the Town, based upon the Scope of Work set forth in the applicable Project Task Order and the payment schedule set forth in Article 2 of this Contract. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Consultant is entitled to for such work, and the Contract Administrator's determination in this regard shall be final. The Town shall make such final payment within 60 days after the latest of: (i) Consultant's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Consultant's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

6. Termination by the Consultant: If the Town fails to make payment of undisputed amounts due following fourteen (14) days' written notice to the Town, the Designer may terminate the Contract and recover from the Town payment for Work actually executed and approved and accepted by the Town. Under no circumstances shall Town have any liability

for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

#### **ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in the Request for Qualifications Scope of Work and Individual Project Task Orders. Services which are not included in the Request for Qualifications Scope of Work will be considered Additional Services only if approved in writing by the Contract Administrator prior to their performance. The Consultant shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from the Town. In the event the Consultant performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Consultant shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Consultant may engage such subconsultants or professional associates as Consultant may deem necessary or desirable for the timely and successful completion of any Project Task Order. However, the use of such subconsultants or professional associates for the performance of any part of the Services specified in the Project Task Order shall be subject to the prior written approval of the Town. Employment of such subconsultants or professional associates in order to complete the work set forth in the Project Task Order shall not entitle Consultant to additional compensation beyond that set forth in Article 2. The Consultant shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

#### **ARTICLE 7. COMPLETENESS AND ACCURACY**

The Consultant shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all work done pursuant to the Contract Documents, including, but not limited to the Services, the Work Product, and the reports, survey work, plans, supporting data and special provisions prepared or compiled pursuant to Consultant's obligations under this Contract, including any applicable Project Task Order and shall correct at Consultant's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Consultant's Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder.

#### **ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS**

1 All documents including but not limited to data computation, studies, reports,

design notes and any original drawings which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Consultant or upon termination of this Contract for any reason. To the extent any such documents or the Work Product is deemed to be the property of Consultant, Consultant hereby assigns all of Consultant's right, title and interest (including any applicable copyrights) in such documents and Work Product to the Town.

2. Upon execution of a Project Task Order, the Consultant and all design professionals and sub-consultants working under or for Consultant, hereby grant to the Town an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Consultant pursuant to this Agreement ("the Instruments of Service"), for the purposes of constructing and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Consultant's Instruments of Service), or for construction of the same type of Project at other locations, by the Town and others retained by the Town for such purposes. This license shall extend to those parties retained by the Town for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. The Consultant shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of the Agreement and the completion of the Project. Upon completion of the Project and/or termination of the Agreement for any reason, Consultant shall deliver to the Town full sized and usable copies (including any and all CAD and/or computer files) of all data, documents, designs, drawings and specifications generated by Consultant, including those generated by any suppliers, subcontractors or sub-consultants. The Town shall retain all rights and ownership of all documents, designs, drawings, specifications, and/or styles provided to Consultant by the Town in relation to the Contract and the Project, and Consultant shall not utilize any such material in relation to any other work or project. If the Town elects to use, or permits others to use, the Consultant's drawings, designs or specifications for other Projects, uses, or in a manner not prescribed by the Consultant, the Consultant shall have no responsibility or liability for claims arising from said use.

## **ARTICLE 9. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Consultant shall, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subconsultant. The Consultant's duty to, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Consultant or anyone for whose acts the Consultant may be legally liable. It is the specific intention of the Parties

that the Indemnitee shall be indemnified by Consultant only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such consultant, subconsultant or design professional or other persons employed or used by such consultant, subconsultant or design professional in the performance of the contract or subcontract. The Consultant will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. The Consultant's obligations under this Article shall survive the expiration or earlier termination of this Contract.

3. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

### **ARTICLE 10. INSURANCE**

Consultant shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit B.

### **ARTICLE 11. WARRANTIES**

1. The Consultant shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Consultant's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Consultant shall correct or replace as required by the Contract Administrator, at Consultant's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services provided under this Contract. The Town's acceptance or approval of the Services shall in no way relieve the Consultant of any of Consultant's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

### **ARTICLE 12. DISCLOSURES BY CONSULTANT.**

1. The Consultant shall reveal fully and in writing any financial or compensatory agreements which the Consultant has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Consultant hereby warrants that it has not employed or retained any

company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that the Consultant has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Consultant shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

### **ARTICLE 13. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

### **ARTICLE 14. NOTICE**

All notices or demands required to be given, pursuant to the terms of this contract, shall be given to the other Party in writing, delivered in person, sent by email, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager  
22350 South Ellsworth Road  
Queen Creek, Az 85142  
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC  
1850 N Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Scott A. Holcomb  
Email: [SHolcomb@dickinsonwright.com](mailto:SHolcomb@dickinsonwright.com)

Consultant: Wood Environment & Infrastructure Solutions, Inc.  
4600 E. Washington St. Ste. 600  
Phoenix, AZ 85034  
Attn: Anita Johari  
Email: [anita.johari@woodplc.com](mailto:anita.johari@woodplc.com)

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by email transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by email transmission may also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by email transmission.

## **ARTICLE 15. SPECIAL PROVISIONS**

1. Construction Services: If the Services include construction phase services and/or contract administration during the construction of the Project, Consultant shall provide, at no additional cost to the Town, such services, including without limitation inspections, attending meetings, responses to request for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, and/or as may be reasonably requested by the Town.

2. Specifications: The Uniform Specifications for Public Works Construction issued by the Maricopa Association of Governments ("MAG Specifications") have been adopted by the Town and shall apply to the Project and the Services, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the "Town Specifications"), those Town Specifications shall apply to the Project and the Services when and where appropriate. Any questions concern the applicability of any specific MAG or Town Specification to the Project or the Services shall be directed in writing to the Town Engineer.

3. Corrections: Consultant shall promptly provide, at no additional cost to the Town, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawing provided by Consultant. If requested by the Town, Consultant shall provide the Town with "As Built" drawing at the completion of the Project, in such form and detail as the Town may require.

4. Coordination: Consultant shall be responsible for coordinating the Services, and all designs, drawings and/or specifications developed in relation thereto, with the Town Engineering Department and other departments or agencies within the Town, other design professionals and other contractors involved in the Project, as well as the other designs, drawings and/or specifications for the Project. Consultant shall also cooperate with the Town in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

5. Quality/Special Features: Consultant is responsible, to the extent necessary to perform the Services, at no additional charge to the Town, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Project and the Town. The Town's determination as to the level of quality required and on all aesthetic issues shall be final and binding.

## **ARTICLE 16. GENERAL PROVISIONS**

1. RECORDS AND AUDIT RIGHTS. Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

2. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

3. ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

4. GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

5. INDEPENDENT CONTRACTOR. The services Consultant provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Consultant shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

6. TAXES. Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this contract. The Town shall have no obligation to pay any amount for taxes, of any type, incurred by the Consultant. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Consultant acknowledges that Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

7. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

8. COMPLIANCE WITH LAW. The Consultant specifically agrees and hereby warrants to the Town that in the performance of the Services, Consultant and anyone acting on Consultant's behalf, including but not limited to Consultant's subconsultants, will comply



with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

9. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

10. WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

11. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

#### 12. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Consultant warrants to the Town that the Consultant and all its subconsultants are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Consultant acknowledges that a breach of this warranty by the Consultant or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Consultant or any subconsultant who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Consultant and any of its subconsultants to ensure compliance with this warranty.

The Town will not consider Consultant or any of its subconsultants in material breach of the foregoing warranty if Consultant and its subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. ISRAEL BOYCOTT PROVISION. To the extent possible, Consultant certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

14. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

15. LICENSES. Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Consultant and the Services.

16. PERMITS AND RESPONSIBILITIES. Consultant shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17. LIENS. Consultant shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Consultant shall deliver appropriate written releases, in statutory form of all liens to the Town.

18. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Consultant or any other person except with the prior written permission of the Town.

19. WORKPLACE COMPLIANCE. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

20. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

#### **ARTICLE 17. FUNDS APPROPRIATION**

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.**

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract on the date first written above.

**TOWN OF QUEEN CREEK:**

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**CONSULTANT:**

\_\_\_\_\_  
Richard D. Yano, Project Principal  
Wood Environment & Infrastructure Solutions, Inc.

**EXHIBIT A**

**PROJECT TASK ORDER FORM**



**TOWN OF QUEEN CREEK,  
an Arizona municipal corporation ("TOWN")**

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**PROFESSIONAL PROJECT TASK ORDER**

**Title of project**

**Project Task Order No. 01**  
**Contract No. \_\_\_\_\_**  
**Project No. \_\_\_\_\_**

**THIS PROJECT ORDER** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation, hereinafter called ("TOWN") and the "CONSULTANT" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the CONSULTANT Contract No. \_\_\_\_\_, dated \_\_\_\_\_ between TOWN and CONSULTANT ("Contract"). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

TOWN and CONSULTANT agree as follows:

**TOWN:**

**Town of Queen Creek**  
**Project Manager:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**CONSULTANT:**

**Firm Name**  
**Address**  
**Arizona Registration No.**  
**Federal Tax ID No.:**  
**Design Professional Representative:**  
**Telephone:**  
**Fax:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order #01 is \_\_\_\_\_.

The Project is scheduled to commence on \_\_\_\_\_ and be completed no later than the agreed upon schedule to be submitted by the Consultant or a maximum of XXXX calendar days.

**PROJECT SITE ADDRESS/LOCATION:** The Project for this Project Task Order # 01 is located at  
*Location of Project*

**PROJECT TASK ORDER PRICE (Not to Exceed):** **\$XXXXXX**

1. \_\_\_\_\_ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. \_\_\_\_\_ **Fee plus Costs:** The Project Order Task Fee is in the amount of \$ \_\_\_\_\_ to



be paid in installments based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

- i. Prior to approval of the preliminary documentation (or \_\_\_% of plans), the billed amount shall not exceed \_\_\_% of the total Contract Price.
- ii. Prior to approval of the final documentation (or \_\_\_% of plans) deliverable, the billed amount shall not exceed \_\_\_% of the total Contract Amount.
- iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed \_\_\_% of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

- i. The Project Task Order Reimbursable Cost is in the amount of \$\_\_\_\_\_ to be paid based upon monthly progress reports and detailed invoices submitted by \_\_\_\_\_ in such form as approved by TOWN

**c. Other:**

- i. Subcontractor Mark Up will be paid in the following manner: \_\_\_\_\_.
- ii. Unique Insurance and/or Bond Requirements: \_\_\_\_\_.
- iii. Unique Compliance with Government Provisions: \_\_\_\_\_.

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:** Attached Exhibit A

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY)** (Article 11): Attached Exhibit B.

**PROJECT SPECIFIC CONDITIONS (IF ANY):** Attached Exhibit C.

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

**“TOWN”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**“DESIGN PROFESSIONAL”**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**ATTEST:**

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



**PROJECT TASK ORDER # 01**

**EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE**





**PROJECT TASK ORDER # 01**

**EXHIBIT B**

**PROJECT SPECIFIC CONDITIONS (IF ANY)**

4820-2637-7466 v1 [53749-1]

**EXHIBIT B**  
**INSURANCE**

1. The Consultant shall secure and maintain during the life of this Contract, the insurance coverage set forth in this Exhibit B, which shall include statutory workman's compensation, comprehensive general and automobile liability, Consultant's liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000.00) combined single limit. The Consultant's general liability limits shall be no less than one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) policy aggregate naming the Town as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1, 000,000.00). In other than errors and omissions professional liability, and workman's compensation, the Town shall be named as an additional insured. All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A or better through Lloyd's of London. Should coverage be written on a claims-made basis, the Consultant shall provide, prior to commencement of any work, an initial certificate of insurance evidencing required coverage limits from date of contract execution through date of policy expiration. Subsequently, a certificate of insurance or a renewal quotation accompanied by evidence of premium payment shall be presented a minimum of thirty (30) days prior to date of expiration of current certificate. Such certificate or evidence of continuous coverage shall be provided on a periodic basis for a minimum of two (2) years after completion of contract, and shall contain a certification that the claims period for such insurance is retroactive to the effective date of this Contract. In the event the Consultant fails to provide such certificate of coverage retroactive to the beginning date of this Contract, the Town may, but shall not be required to, purchase insurance, if available, to protect itself against any losses which would have been covered by the errors and omissions policy Consultant is required to maintain under this Article. If the Town elects to purchase the insurance under this provision, Consultant shall be liable to the Town for all costs incurred by the Town for purchasing such insurance.

2. The Consultant shall submit to the Town a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph **within ten (10) days** of award of this Contract. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to the Consultant.

3. Additional Insurance Requirements: The Consultant is primarily responsible

for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Consultant shall require any and all subcontractors to maintain insurance as required herein naming Town and Consultant as "Additional Insured" on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Consultant shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Consultant waives all rights of subrogation or similar rights against Town, its council members, agents, representatives, officers, officials, and employees. All insurance policies, except Workers' Compensation required by this Contract, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, Town of Queen Creek, its council members, agents, representatives, officers, officials and employees as Additional Insureds. The Town reserves the right to require complete copies of all insurance policies required by this Contract at any time. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.



RFQ 22-011 Contract Exhibit C  
Pricing

**On-Call Professional Services  
Transportation Planning**

**Firm Name: Wood Environment & Infrastructure Solutions, Inc.**

Submit fee schedule in accordance with the sample below. Respondent may provide a table of costs based on expertise of employee i.e. classification / title.

Item	Classification / Title	Average Hourly Rate	Overhead (Maximum 150%)	Net Fee (Maximum 10%)	Total Hourly Rate
1	Principal	\$80.00	\$120.00	\$20.00	\$220.00
2	Senior Project Manager	\$75.00	\$112.50	\$18.75	\$206.25
3	Senior Project Engineer	\$60.00	\$90.00	\$15.00	\$165.00
4	Project Manager	\$54.00	\$81.00	\$13.50	\$148.50
5	Design Leader	\$55.00	\$82.50	\$13.75	\$151.25
6	Engineer	\$50.00	\$75.00	\$12.50	\$137.50
7	Senior Designer	\$42.00	\$63.00	\$10.50	\$115.50
8	Designer	\$35.00	\$52.50	\$8.75	\$96.25
9	EIT	\$30.00	\$45.00	\$7.50	\$82.50
10	Admin/Clerical	\$30.00	\$45.00	\$7.50	\$82.50
11					
12					
13					



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** DAVE LIPINSKI , CIP DEPARTMENT DIRECTOR

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF DELEGATION RESOLUTION #1443-22 AUTHORIZING AND DIRECTING THE TOWN MANAGER AND/OR CAPITAL IMPROVEMENT PROJECTS DEPARTMENT DIRECTOR TO TAKE ANY AND ALL ACTION NECESSARY; AND TO SIGN ANY AND ALL DOCUMENTS, CONTRACTS, AND/OR AGREEMENTS RELATED TO THE INVESTIGATION AND DESIGN OF THE RITTENHOUSE AND UNION PACIFIC RAIL ROAD (UPRR) SANITARY SEWER CROSSING REMEDIATION PROJECT IN AN AMOUNT NOT TO EXCEED \$200,000, AND THE NECESSARY BUDGET ADJUSTMENTS. (THIS IS NOT A FY 22 BUDGETED ITEM).

**DATE:** February 16, 2022

**Suggested Action:**

Staff recommends approval of Delegation Resolution #1443-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to the investigation and design of the Rittenhouse and Union Pacific Rail Road (UPRR) sanitary sewer crossing remediation project in an amount not to exceed \$200,000, and the necessary budget adjustments.

**Relevant Council Goal(s):**

Superior Infrastructure - Capital Improvement Program

**Discussion:**

The delegation resolution total not to exceed amount of \$200,000 includes funding for investigation and design for the replacement of the 24-inch sanitary sewer line that extends from the Queen Creek Road alignment north of the UPRR tracks to the southwest under the tracks and Rittenhouse Road, and other necessary project components that may be needed prior to the start of construction.

The Utility Services Department recently completed a video investigation of the existing 24-inch sanitary sewer line that runs from within the Queen Creek Road alignment from Ellsworth Road to the west. As the line approaches the UPRR tracks, the alignment shifts to the southwest creating a perpendicular crossing of both the tracks and Rittenhouse Road into the Canyon State Academy property. The investigation of this sanitary sewer line revealed that it is in poor condition and needs to be reconstructed quickly to avoid a failure of the line. Staff is working to assemble a team to

review any and all alternatives to allow for the design and replacement of this line while providing service to all of the existing customers and new development that will discharge to the system upstream of this line. The team anticipates that there may be interim improvements that may be required while the ultimate design is completed and permitted through the town, the Flood Control District of Maricopa County and the UPRR. Staff will return to the Town Council once a solution is designed to request construction funding for the project.

**Timeline:**

Design: February - August 2022  
 Construction: August 2022 - February 2023

**Cost:**

Investigation & Design: \$200,000  
 Construction: To be determined based on ultimate solution  
**Total for Investigation & Design: \$200,000**

**Fiscal Impact:**

The total investigation and design cost of the project is estimated to be \$200,000.

Project WW100 Rittenhouse and Rail Road Rehabilitation was not included in the FY 2021/22 Adopted Budget, and a budget adjustment of \$200,000 from the FY 2021/22 Waste Water CIP Contingency will be needed. The following table summarizes the budget adjustment required:

Project	Name	Investigation & Design Costs	FY2021/22 Adopted Budget	Contingency Required
WW100	Rittenhouse and Railroad Rehabilitation	\$200,000	\$0	\$200,000

This project is not growth-related, 100% of the costs will be funded by utility rate revenue.

**Alternatives:**

The Town Council may decide not to approve Resolution 1443-22. If the resolution is not approved, the sewer line will not be rehabilitated and it will remain in a state of poor condition.

**Attachment(s):**

1. [DR 1443-22 Location Map.pdf](#)
2. [DR1443-22.pdf](#)

Attachment 1

Rittenhouse and Union Pacific Rail Road  
Sanitary Sewer Remediation Project



## RESOLUTION 1443-22

**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN COUNCIL OF QUEEN CREEK, ARIZONA, AUTHORIZING AND DIRECTING THE TOWN MANAGER, AND/OR CAPITAL IMPROVEMENT PROJECTS DEPARTMENT DIRECTOR TO TAKE ANY AND ALL ACTION NECESSARY; AND TO SIGN ANY AND ALL DOCUMENTS, CONTRACTS AND AGREEMENTS RELATED TO THE RITTENHOUSE AND UNION PACIFIC RAILROAD SANITARY SEWER CROSSING REMEDIATION PROJECT.**

WHEREAS, the Town Council finds that it is in the interest of the Town to enter into Contracts and/or Agreements to complete the Rittenhouse and Union Pacific Railroad (UPRR) sanitary sewer crossing remediation (the "Project"), as more specifically described in the Staff Report presented to the Council in support of this Resolution, and the summary of items included in the Project set forth in Exhibit 1 attached hereto, both of which are incorporated herein by this reference; and

WHEREAS, Article 5 of the Town's Procurement Policy authorizes the Town Council to delegate signature authority to the Town Manager and/or Department Director for certain contracts related to the Project; and

WHEREAS, funding for the Project is included in the Town's Capital Improvement Plan (CIP) Budget;

NOW, THEREFORE, the Mayor and Common Council resolve as follows:

Section 1. That the total authorized budget amount for the Project is hereby affirmed to be \$200,000.

Section 2. That the Town Manager has the authority to sign and enter into, on the Town's behalf, individual contracts, up to an aggregate limit of the total authorized budget amount, for the completion of the Project.

Section 3. That the Capital Improvement Projects Director has the authority to sign and enter into, on the Town's behalf, individual contracts and/or agreements valued at less than \$100,000, up to an aggregate limit of the total authorized budget amount, for the completion of the Project.

Section 4. That the Town Manager, Capital Improvement Projects Director and Town Attorney are authorized to sign such documents in such form as is finally approved and take such actions as are reasonably necessary to effectuate the terms of the contracts, services, and/or agreements.



Section 5. This delegation of signature authority shall remain in force until the Project is delivered, completed, and placed into service, or until revoked by a subsequent, validly passed resolution of the Town Council.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Queen Creek, Arizona this 16th day of February, 2022.

FOR THE TOWN OF QUEEN CREEK:

\_\_\_\_\_  
Gail Barney, Mayor

REVIEWED BY:

\_\_\_\_\_  
John Kross, Town Manager

ATTESTED TO:

\_\_\_\_\_  
Maria Gonzalez, Town Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Dickinson Wright PLLC  
Town Attorneys

**Delegation #1443-22**  
**Exhibit 1**

Rittenhouse and Union Pacific Railroad Sanitary Sewer Crossing Remediation		Estimated Cost
<b>Investigation &amp; Design</b>	Investigation and Design	200,000
	<b>Proposed Investigation and Design Subtotal:</b>	<b>200,000</b>
<b>CONSTRUCTION</b>	To be determined based on ultimate design	
	<b>Proposed Construction Subtotal</b>	
<b>Total Project Budgt:</b>		<b>\$ 200,000</b>



TOWN OF  
**QUEEN CREEK**  
ARIZONA

8.L

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** SCOTT HOLCOMB TOWN ATTORNEY, MARIA GONZALEZ CMC, TOWN CLERK

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF ORDINANCE 781-22 AMENDING THE QUEEN CREEK TOWN CODE CHAPTER 2 MAYOR AND COUNCIL, ARTICLE 2-6 ORDINANCES, RESOLUTIONS AND CONTRACTS, SECTION 2-6-8 POSTING REQUIRED, TO ESTABLISH ONE PHYSICAL POSTING LOCATION FOR PUBLIC NOTICE OF ORDINANCES IMPOSING A PENALTY, FINE, FORFEITURE, OR OTHER PUNISHMENT.

**DATE:** February 16, 2022

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**Suggested Action:**

To approve Ordinance 781-22 amending the Queen Creek Town Code Chapter 2 Mayor and Council, Article 2-6 Ordinances, Resolutions and Contracts, Section 2-6-8 Posting Required, to establish one physical posting location for public notice of ordinances imposing a penalty, fine, forfeiture, or other punishment.

**Relevant Council Goal(s):**

Effective Government

**Discussion:**

On February 2, 2022, the Town Council adopted Resolution 1441-22, adopting revisions to the Town Council Policies and Procedures Handbook (the "Handbook").

The February 2, 2022 revisions to the Handbook established one physical posting location for all public meeting notices for Town of Queen Creek, the Queen Creek Town Hall, among other things. All public notices will continue to be published on the Town's website.

Town Code Chapter 2 Mayor and Council, Article 2-6 Ordinances, Resolutions and Contracts, Section 2-6-8 Posting Required, currently requires ordinances imposing any penalty, fine, forfeiture, or other punishment to be posted after passage in three or more public places within the Town, and also requires that the person posting the ordinance file an affidavit in the office of the clerk as proof of posting, as was previously required under A.R.S. § 9-813. However, A.R.S. § 9-813 has been amended to require posting at one location and the statutes does not require filing an affidavit of posting, although an affidavit may be used to prove the proper posting.

This Ordinance 781-22 would revise Town Code Section 2-6-8 be consistent with the Handbook and

amended A.R.S. § 9-813, requiring that ordinances imposing any penalty, fine, forfeiture or other punishment be posted at Town Hall and the Town website, and eliminates the requirement that the person posting the ordinance file an affidavit as proof of posting.

**Alternatives:**

The Council may choose to not adopt Ordinance 781-22, and the currently existing version of Town Code Section 2-6-8 will remain in effect, requiring posting in three physical location for ordinances imposing any penalty, fine, forfeiture, or other punishment, and the filing of an affidavit of posting with the Town Clerk.

**Attachment(s):**

1. [Ordinance 781-22](#)

**ORDINANCE 781-22**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING THE QUEEN CREEK TOWN CODE CHAPTER 2 MAYOR AND COUNCIL, ARTICLE 2-6 ORDINANCES, RESOLUTIONS AND CONTRACTS, SECTION 2-6-8 POSTING REQUIRED, TO ESTABLISH ONE PHYSICAL POSTING LOCATION FOR PUBLIC NOTICE OF ORDINANCES IMPOSING A PENALTY, FINE, FORFEITURE, OR OTHER PUNISHMENT.**

**WHEREAS**, A.R.S. § 431.02 requires the Town of Queen Creek (the “Town”) to post all public notices on the Town website, and to give “additional public notice as is reasonable and practicable;” and

**WHEREAS**, the Town has determined that the posting of public notices of ordinances imposing a penalty, fine, forfeiture, or other punishment in one physical location in addition to the Town website is “reasonable and practicable;” and

**WHEREAS**, the Arizona Legislature amended Arizona Revised Statutes (“A.R.S.”) § 9-813 to reduced the requirements for posting of public notices of ordinances imposing a penalty, fine, forfeiture, or other punishment in one physical location in addition to the Town website;

**WHEREAS**, the Town passed Resolution No. 1441-22 on February 2, 2022, amending the Town Council Policies and Procedures Handbook to set the Town policy of one physical posting location for all Town public notices;

**WHEREAS**, the Town wishes to amend the Town Code to be consistent with the Town Council Policies and Procedures Handbook and A.R.S. § 9-813.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Common Council of the Town of Queen Creek, Arizona, as follows:

**Section 1:** Chapter 2 Mayor and Council, Article 2-6 Ordinances, Resolutions and Contracts, Section 2-6-8 Posting Required, of the Town Code is hereby amended to read as follows (additions shown in ALL CAPS; deletion shown by ~~strikethrough~~):

~~Every ordinance~~ **ORDINANCES** imposing ~~any~~ penalty, fine, forfeiture or other punishment shall, after passage, be posted by the clerk **AT TOWN HALL, AND ON THE TOWN’S WEBSITE** ~~in three or more public places within the town and an affidavit of the person who posted the ordinance shall be filed in the office of the clerk as proof of posting.~~

**Section 2:** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**PASSED AND ADOPTED** by the Mayor and Common Council of the Town of Queen Creek, Arizona, this 16<sup>th</sup> day of February, 2022.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

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Gail Barney, Mayor

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Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

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John Kross, ICMA-CM  
Town Manager

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Dickinson Wright, PLLC  
Attorneys for the Town



TOWN OF  
**QUEEN CREEK**  
 ARIZONA

**TO:** HONORABLE MAYOR AND TOWN COUNCIL  
**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER  
**FROM:** SCOTT MCCARTY, FINANCE DIRECTOR  
**RE:** OVERVIEW OF THE AMERICAN RESCUE PLAN ACT (ARPA) FUNDING.  
**DATE:** February 16, 2022

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**Suggested Action:**

Discussion only.

**Relevant Council Goal(s):**

Effective Government: KRA Financial Stability

**Discussion:**

The American Rescue Plan Act (ARPA) was passed by Congress and signed into law by President Biden on March 11, 2021. This was the federal government's third "stimulus package" designed to respond to the impacts of the COVID-19 pandemic. Among other provisions, ARPA included \$350 billion of direct cash payments to every state, county, city, town, territory, and tribal government. These payments were based on each entity's 2020 Census population figures.

Queen Creek's allocation is \$4,815,893 and will be distributed in two equal installments 12 months apart. We received the first tranche of \$2,407,946.50 on June 17, 2021. We expect to receive the second tranche of the same amount in June 2022.

In May 2021, the U.S. Treasury Department released initial guidance on allowable uses of ARPA funds. This guidance included a series of FAQ's, webinars, and an Interim Final Rule to assist state and local governments in determining where and how the funds could be spent.

In January 2022, the U.S. Treasury Department released the Final Rule on use of ARPA funds. The Final Rule kept the original guidance in place but also broadened allowable uses of funds in several categories and provided greater simplicity in compliance and reporting in certain areas.

**Options for Use of Funds**

The over-arching principle in the federal guidance is that the funds should be used to "respond to" the impacts of the COVID-19 pandemic. These responses fall into four general categories:

1. Replace lost public sector revenue
2. Make necessary investments in water, sewer, and broadband infrastructure

3. Respond to public health and economic impacts of COVID-19
4. Provide premium pay for eligible workers

### **Replace Lost Public Sector Revenue**

ARPA funds may be used to pay for “government services” in an amount equal to the amount of revenue loss experienced by the government. “Government services” is defined as “any service that is traditionally provided by the government,” though the Final Rule lists debt service, settlements and judgments, and extraordinary deposits into pension funds as specifically excluded from allowable uses.

The initial guidance included a formula that governments had to use to calculate a revenue loss. Queen Creek has been fortunate in that we have not experienced a loss in revenue during the pandemic. Therefore, staff initially believed this category would not apply to the Town.

However, the Final Rule contained a significant addition of a “standard allowance” option for revenue loss. The federal government will presume that up to \$10 million in revenue has been lost due to the pandemic, and governments can use that amount, up to the entity’s total allocation amount, to fund “government services.” Governments are not required to demonstrate an actual revenue loss under this option.

With this new guidance, the Town’s ARPA allocation becomes very similar to the \$5.8 million in CARES Act funds we received in June 2020. Those funds were restricted for use on public safety personnel costs, under the presumption that all public safety personnel were “responding to” the COVID-19 pandemic. By selecting the “standard allowance” option, the Town could deposit all \$4.8 million of its ARPA funds into the Operating Budget and use those funds to pay for public safety costs (both Police and Fire & Medical) in fiscal year 2022.

### **Infrastructure Investments**

The federal guidance allows governments to use ARPA funds to make “necessary” investments in water, sewer, and broadband infrastructure. For Queen Creek, these projects could include those found in our current utilities CIP budget or a future stormwater project. ARPA funds could also be used to expand fiber to our water and wastewater sites and to modernize our cybersecurity hardware, software, and related infrastructure.

Guidance under the other categories of allowable uses were reviewed but do not appear to be a good fit or top priority for Queen Creek:

*Public Health Impacts.* Queen Creek does not operate a hospital, health clinic, health department or otherwise provide direct public health services to Queen Creek residents. These services are typically provided by county and state agencies.

*Economic Impacts.* While some individuals and businesses in Queen Creek have experienced hardship during the pandemic, Town residents and businesses have weathered the financial impacts as a whole without severe disruption. Also, federal and state programs already exist through ARPA and prior COVID-related federal legislation to assist individuals and businesses who are under financial hardships. It did not seem prudent for Queen Creek to duplicate these efforts.

*Premium Pay for Essential Workers.* The intent of this category is to compensate those employees



(both government and private-sector workers) who were required to interact directly with the public and therefore were potentially at a higher risk of contracting COVID-19 than those workers who were able to work from home. The federal guidance requires the government to demonstrate that these employees were performing “essential work” and that their total compensation falls under certain defined thresholds. This category was ultimately not considered due to the limited amount of funds the Town received under ARPA relative to the Town’s other priorities.

### **Guiding Principles**

As with all grant funds, the Town’s use of ARPA funds should follow our existing financial guiding principles:

1. Prioritize Public Safety – choosing the “standard allowance” option would effectively make the ARPA funds similar to the CARES Act funds in that they would be applied to our existing Police and Fire costs without incurring additional expenses.
2. Maintain Service Levels – ensure the Town is keeping up with population and business growth by maintaining operating service levels and timely infrastructure investments.
3. Maintain Long-Term Fiscal Balance – because grants are one-time funds, they should not be used to start new ongoing programs that will later require continued commitment of local revenues.

The federal guidance on ARPA funds is extensive but also gives governments broad flexibility in how the funds can be used. The overall intent of the ARPA program is to ensure governments have the resources they need to respond to the COVID-19 pandemic in ways that best fit each government’s unique situation, needs, and capabilities.

### **Attachment(s):**

1. [Presentation](#)



# Overview of the American Rescue Plan Act (ARPA) Funding

Town Council Meeting  
February 16, 2022

# Overview of ARPA

- Passed by Congress in March 2021
- \$1.9 trillion
- “Provides additional relief to address the continued impact of COVID-19”
  - Economy
  - Public Health
  - State and Local Governments
  - Individuals and Businesses





# Overview of ARPA (continued)

- Sec. 9901: Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)
  - \$350 billion to All States, Counties, Cities, Towns, Territories, and Tribal Governments
  - Based on population
  - Queen Creek Allocation = \$4.8 million
    - \$2.4M received June 2021
    - \$2.4M to be received June 2022

# Overview of ARPA (concluded)

- Interim Final Rule – May 2021
  - Provided Initial Guidance
  - U.S. Treasury Sought Feedback
    - National League of Cities (NLC)
    - National Association of Counties (NACO)
    - State-level Organizations
    - Public
- Final Rule – January 2022
  - Broader flexibility
  - Greater simplicity



# ARPA Eligible Expenses

## Four Main Categories:

1. Replace Lost Public Sector Revenue
2. Investments in Water, Sewer, and Broadband Infrastructure
3. Respond to Public Health and Economic Impacts of COVID-19
4. Premium Pay for Eligible Workers



# Replace Lost Public Sector Revenue

- Used to pay for “government services” in amount equal to revenue loss
  - “Any service traditionally provided by a government”
    - Public Safety
    - Streets and Public Works
    - Parks and Recreation
    - Administration
  - Exceptions:
    - Debt Service
    - Settlements and Judgments
    - Extra Deposits into Pension Funds to pay down unfunded liabilities





# Replace Lost Public Sector Revenue (continued)



## Interim Rule:

- Formula to calculate “loss”
- Did not apply to Queen Creek



## Final Rule:

- Option to select a “Standard Allowance” up to \$10 million
- Not required to demonstrate actual loss of revenues





# Replace Lost Public Sector Revenue (concluded)

## Standard Allowance Option

- Similar to CARES Act Funds
  - \$5.8M restricted for Public Safety Personnel Expenses
- Queen Creek: Public Safety Expenses
- Simplified Reporting



# Infrastructure – Highlights

- Water and Sewer
  - Utility Master Plan CIP Projects
  - Stormwater Projects
- Broadband
  - “Cybersecurity” – modernize infrastructure, hardware, and software



# Other Categories



- Public Health Impacts
  - Not a core service of Queen Creek
- Economic Impacts
  - Limited in Queen Creek
  - State and County Programs Available
- Premium Pay
  - Multiple Definitions and Rules
  - Limited Funding

# Queen Creek Guiding Principles

- Prioritize Public Safety
  - “Standard Allowance” option makes ARPA similar to CARES Act
- Maintain Service Levels
- Maintain Long-Term Fiscal Balance
  - ARPA Allocation is One-Time Funding
  - Don’t Commit to New Ongoing Expenses
- Simplify Compliance and Reporting
  - ARPA Funds Subject to Annual Audit





# Questions and Comments



TOWN OF  
**QUEEN CREEK**  
ARIZONA

11.C

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS ICMA-CM, TOWN MANAGER

**FROM:** BRUCE GARDNER , ASSISTANT TOWN MANAGER, MICHELE BROWN , HUMAN RESOURCES DIVISION MANAGER

**RE:** COMPREHENSIVE CLASSIFICATION, COMPENSATION AND PERFORMANCE MANAGEMENT UPDATE.

**DATE:** February 16, 2022

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**Suggested Action:**

This presentation is for discussion only.

**Relevant Council Goal(s):**

- 1.4 Continue to monitor and update employee benefits strategies and evaluate trends.
- 1.5 Continue progressive strategies to attract and retain high-performing staff.

**Discussion:**

The Town is challenged to compete in the urban Phoenix metropolitan area by implementing competitive classification, compensation, benefit, and performance management practices. Due to the marketplace and with the uptick in the economy, the Town is competing with other municipalities that are also growing at a rapid rate. The last compensation and classification study was completed by Fox Lawson and Associates and implemented in 2014. The current compensation and classification system was built for a 5-7 year timeframe, understanding that the Town would continue to grow and a new system to be evaluated. Since then, the Town has added staff in a number of areas including the new police department, a new capital improvements department, and have implemented a step system in the public safety areas (fire and police). The current classification system was determined to not be practical, is outdated, and a new pay system needed to be identified to meet the realities of the economy while maintaining the organization's competitiveness for a quality workforce. Additionally, the Town's performance management system was identified to be updated. Aspects of the current system has been in place since 2004. With the creation of public safety and other departments since then, it is time to implement a new evaluation system to match the needs of the organization and individual departments.

In August 2021, the Council approved staff to move forward with Logic Compensation Group to complete a comprehensive classification, compensation and performance management system. As presented to the Council, the goals for the review were to accomplish the following:

1. Ensures proper job descriptions are in place (based on in-depth position description questionnaires with employees, supervisors, and occupational panels to gather job content);
2. Ensures an appropriate hierarchy of jobs is established based on the current employee population and future growth trends, which provides for a reasonable supervisory scope and promotional opportunities for the employees;
3. Ensures pay philosophies are established, updated and approved by the Town Manager and Council and in which future market reviews will be based to ensure market competitiveness within the labor market; and,
4. A new pay structure is developed, with established salary ranges including the manner in which employees move through the ranges, such as merit increases, bonuses, and reclassification increases.
5. The classification and compensation study results should also work in conjunction with a newly established performance management process, to partner together as effective tools in identifying effective employee performance.

Lori Messer, Principal for Logic Consulting Group, will be presenting an update to the Council on the study during Items for Discussion

**Fiscal Impact:**

The completion date goal is March 2022, so that Council will have an opportunity to evaluate the results and determine whether to implement any recommended salary changes and pay philosophies for FY2023.

**Attachment(s):**

1. [Logic Compensation Group draft powerpoint presentation.](#)



Classification & Compensation Study  
Council Presentation  
February 16, 2022

Town of Queen Creek



Logic Compensation Group  
Total Rewards Consulting



# OVERVIEW

## Presentation topics

- ❖ Study Objectives & Key Deliverables
- ❖ Study Overview
- ❖ Study Initiation & Philosophy Development
  - Compensation Philosophy
- ❖ Classification Study
- ❖ Job Evaluation Study
- ❖ Compensation Study
- ❖ Proposed Implementation Costs
  - General
  - Sworn
- ❖ Administrative Recommendations

# STUDY OVERVIEW

Frequent meetings with the Town throughout the Study Process



# STUDY INITIATION & PHILOSOPHY DEVELOPMENT

## Organizational assessment

- ❖ Meeting with the Town's Project Team to understand the current and desired state of the classification and compensation systems.
- ❖ Development and confirmation of a timeline for study completion.
- ❖ Collection and review of a variety of documents related to the Town's classification and compensation administration, including current job descriptions, pay plans, policies and procedures, employee census data, and organizational charts.
- ❖ Meetings with Town department directors to share study goals and obtain additional information specific to areas for improvement in the systems and those aspects of the Town's systems that are working well.
- ❖ Worked with the Town to identify comparator organizations for the compensation survey.
- ❖ Worked with the Town to update its Compensation Philosophy and Supporting Strategies.

# THE TOWN'S UPDATED COMPENSATION PHILOSOPHY

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- The Town of Queen Creek believes that its employees are critical in achieving the Town's mission, goals, and objectives. To be successful, the Town must employ and retain qualified and productive people.
- In order to be a high performing organization, The Town will attract and retain employees who are customer focused and team players. The Town will attract and retain employees who demonstrate initiative, while also accepting responsibility and accountability for their work performance.
- To support, encourage and reward employees, the Town will use a classification and compensation system and operate that system in an open, fair and equitable fashion. The Town will operate the classification and compensation system with emphasis on recognizing and rewarding employees for their success and continuing professional development. The Town will offer appropriate developmental and advancement opportunities to retain the most qualified and productive employees.

# CLASSIFICATION STUDY

## Objectives & Key Deliverables

Understanding Town's System	Job Analysis	Classification System Update	Classification Policies	Job Descriptions	Job Evaluation
<ul style="list-style-type: none"> <li>Review of classification system documentation</li> <li>Meeting with Town's Project Team to classification desires</li> <li>Meetings with Department Heads obtain opinions on the state of the Town's current systems</li> </ul>	<ul style="list-style-type: none"> <li>Administer the PDQ document to employees</li> <li>Conduct of focus groups with employees</li> <li>Conduct of meetings with Department Heads</li> </ul>	<ul style="list-style-type: none"> <li>Review completed employee PDQs</li> <li>Ensure like jobs are classified together</li> <li>Create draft classification structure</li> <li>Review draft structure with Department Heads</li> </ul>	<ul style="list-style-type: none"> <li>Provide the Town with recommendations on policy and procedure issues associated with reclassification methodologies, maintenance, and related issues.</li> </ul>	<ul style="list-style-type: none"> <li>Review employee PDQs and other pertinent job information to update job descriptions</li> <li>Evaluate existing job descriptions utilizing a standardized job evaluation methodology to develop an internal hierarchy of jobs.</li> </ul>	<ul style="list-style-type: none"> <li>Introduce the Town to the various job evaluation methodologies available</li> <li>Implementation of selected job evaluation methodology</li> <li>Meetings with Department Heads to review job evaluation ratings</li> </ul>
DELIVERABLES					
Determination of desire with classification direction	Updates to employee job titles and job hierarchy	Clearly outline career paths/promotional opportunities and provide recognizable compensation growth  Draft and final classification structures  Allocation of employees to proposed structure	Classification policy recommendations	Job description template created  Job descriptions updated/ developed	Job evaluation methodology applied to Town jobs and finalized  Training provided to HR on selected methodology

Communication Feedback Loops Throughout the Study Process

# CLASSIFICATION STUDY

## Process & Results

- ❖ Employees completed Position Description Questionnaires (PDQ)
- ❖ LCG facilitated employee focus groups to confirm information in the PDQs
- ❖ LCG followed up with Department Directors regarding results and made adjustments if necessary
- ❖ Resulting classification structures served as the basis for the Town's updated job architecture:
  - Standardized job titling
  - Clear career paths within job families
  - Broad class structures where appropriate
  - More focus on functional areas of responsibility to enhance recruitment efforts
  - Consistent methodology for determining the hierarchy of jobs in the Town

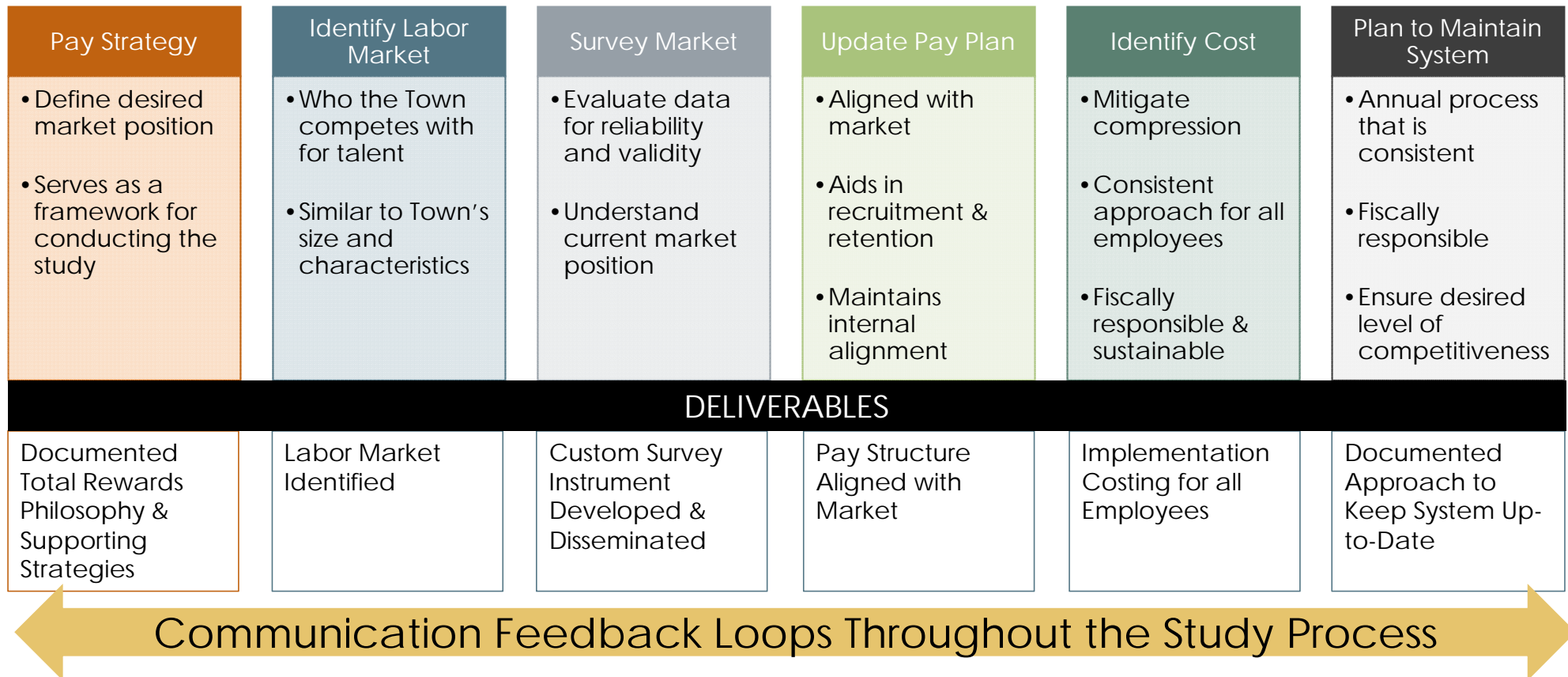
# JOB EVALUATION STUDY

## Review of completed employee PDQs and current job descriptions & development of a job hierarchy

- ❖ Logic Leveling methodology, which utilizes set criteria for evaluating jobs, was applied to all jobs
  - Organizational role
  - Nature of work
  - Requirements for entry (i.e., education, experience, licenses, certifications)
  - Level of accountability and responsibility
  - Supervision exercised and received
  
- ❖ Process provides an objective approach to aligning jobs within the internal hierarchy
  
- ❖ Results reviewed with Town staff
  
- ❖ Job evaluation results were integrated with the market data collected in the compensation study to develop the proposed salary structure

# COMPENSATION STUDY

## Objectives & Key Deliverables





# COMPENSATION STUDY

## Market Comparator Organizations

- ❖ Municipalities of similar budget, population, employee size, organizational conditions, and/or service offerings
- ❖ Location/proximity to the Town
- ❖ Competition for talent

### Comparators

City of Avondale, AZ  
City of Buckeye, AZ  
City of Chandler, AZ  
City of Goodyear, AZ  
City of Mesa, AZ  
City of Peoria, AZ  
City of Phoenix, AZ  
City of Scottsdale, AZ  
City of Surprise, AZ  
City of Tempe, AZ  
Town of Gilbert, AZ

# COMPENSATION STUDY

## Benchmark jobs

Accounting Manager	IT Program Manager	Senior Administrative Assistant
Applications & Business Analyst	Maintenance & Operations Specialist (Utilities)	Senior Financial Services Analyst
Assistant Town Manager	Maintenance & Operations Assistant (Grounds)	Senior Project Manager
Building Official	Maintenance & Operations Crew Leader (Streets)	Streets Superintendent
Chief Of Police	Maintenance & Operations Technician (Streets)	Systems Administrator
Code Compliance Supervisor	Mechanic	Town Clerk
Customer Service Coordinator	Municipal Grounds Superintendent	Town Engineer
Customer Service Representative	Payroll Supervisor	Traffic Engineer
Customer Service Supervisor	Planner I	Traffic Signal Technician
Day Porter	Police Records Supervisor	Utilities Customer Services Manager
Department Director - Development Services	Principal Engineer	Utilities Director
Department Director - Economic Development	Procurement Officer	Utilities Services Coordinator
Department Director Finance	Project Manager	Utility Field Supervisor
Deputy Director - Finance	Recreation Coordinator	Utility Services Technician
Deputy Director - Public Works	Recreation Manager	Firefighter
Emergency Management Coordinator	Recreation Supervisor	Fire Engineer
Engineering Technician	Senior Human Resources Analyst	Fire Captain
Facility Services Technician	Senior Inspector (Development Services)	Fire Marshal
Field Operations Superintendent	Senior IT Technician	Fire Battalion Chief
Fire Chief	Senior Park Ranger	Police Officer
Human Resources Specialist	Senior Plans Examiner	Police Sergeant
Inspector (Utilities)	Senior Facility Services Specialist	Police Lieutenant

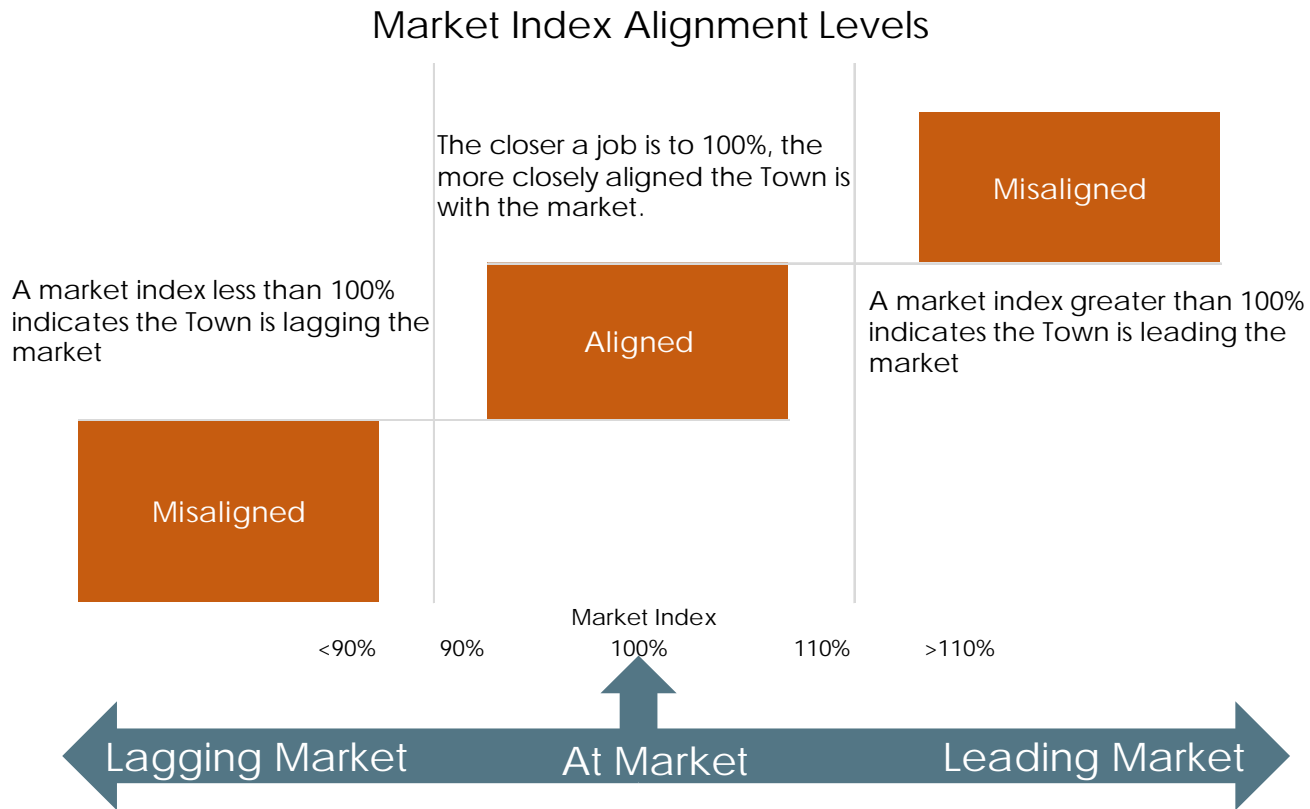
# COMPENSATION STUDY

## Custom Survey Data & Validation

- ❖ The data for matched jobs from comparators included:
  - job title
  - number of incumbents
  - average time in position
  - average actual salary
  - salary range
  
- ❖ Several data validation steps were completed to ensure the reliability of collected survey data:
  - Follow-up calls initiated by LCG to clarify missing or questionable data submissions
  - Outlier analysis was performed on reported salary data to identify extreme data
  - Survey inputs were reviewed by multiple LCG staff to ensure the integrity and validity of the data

# COMPENSATION STUDY

## Summary of Findings: Base Pay



# COMPENSATION STUDY

## Summary of Findings

- ❖ Consistent with the Town’s pay strategy of targeting pay at the 60<sup>th</sup> percentile of the market, the following strategies were applied:
  - General and sworn management: Town’s range midpoints were compared to the 60<sup>th</sup> percentile of actual salaries in the market
  - Sworn non-management fire: Town’s range maximums compared to market range maximums
  - Sworn non-management police: Town’s range minimums compared to market range minimum

Jobs	City Midpoint Indexed to Market Actual Salary	Range Minimum Index	Range Maximum Index
General	94.9%		
Fire Sworn			105.1%
Police Sworn		100.1%	

# COMPENSATION STUDY

## Summary of Findings: Pay Practices & Benefits

Town Leads Market	Town Lags Market	Town Comparable with Market
Lump Sums for Over Max Employees	Defining origin of callback pay (home vs. work)	Pay Plan Designs
Police Hiring Bonuses	Tax Deferred Retirement	Anniversary Date Reviews
Lump Sums for Having/Obtaining Education	Tuition Reimbursement Amount	Variable increases for non-sworn employees; same increases for sworn employees
Bilingual Pay	Vacation Cash Out Minimum Balance	Sworn Supplemental Pay
Contribution Amounts to HSA	Sick Leave Payout at Termination	Offering Tuition Reimbursement & Requiring Payback upon Termination
Opt-Out Payments for those not Electing Group Medical Insurance	Base Life Insurance Coverage for Employees with Salaries >\$50K & Life Insurance Maximum	Not Offering Paid Parental Leave
PPO Medical EE Only, PPO Dental, PPO Vision	PPO Medical EE + Family	Not Offering Sick Leave Donation
		Base Life Insurance Coverage up to \$50k
		Wellness Offerings

# COMPENSATION STUDY

## Development Parameters for Salary Structures

- ❖ Three salary structures developed:
  1. General Structure
  2. Sworn Fire Structure
  3. Sworn Police Structure
  
- ❖ Market data and job evaluation used to create the proposed General salary structures
  
- ❖ Grouped like-positions, set ranges based on market data
  
- ❖ Current range widths maintained
  
- ❖ Sworn Police and Fire market data used to create Police and Fire salary structures

# COMPENSATION STUDY

## General Salary Structure

Grade	Range Min	Range Mid	Range Max
2	\$29,544	\$35,453	\$41,361
3	\$31,716	\$38,059	\$44,403
4	\$34,729	\$41,675	\$48,621
5	\$38,029	\$45,634	\$53,240
6	\$41,641	\$49,969	\$58,298
7	\$45,597	\$54,717	\$63,836
8	\$49,929	\$59,915	\$69,900
9	\$54,672	\$65,607	\$76,541
10	\$57,305	\$70,199	\$83,093
11	\$61,317	\$75,113	\$88,909
12	\$65,609	\$80,371	\$95,133
13	\$70,201	\$85,997	\$101,792
14	\$75,116	\$92,017	\$108,918
15	\$80,374	\$98,458	\$116,542
16	\$86,000	\$105,350	\$124,700
17	\$92,020	\$112,724	\$133,429
18	\$98,461	\$120,615	\$142,769
19	\$105,353	\$129,058	\$152,762
20	\$111,506	\$139,383	\$167,259
21	\$120,427	\$150,533	\$180,640
22	\$130,061	\$162,576	\$195,091
23	\$140,466	\$175,582	\$210,698
24	\$148,728	\$189,628	\$230,529
25	\$160,626	\$204,799	\$248,971
26	\$170,140	\$221,183	\$272,225
27	\$183,752	\$238,877	\$294,003



# PROPOSED IMPLEMENTATION COSTS

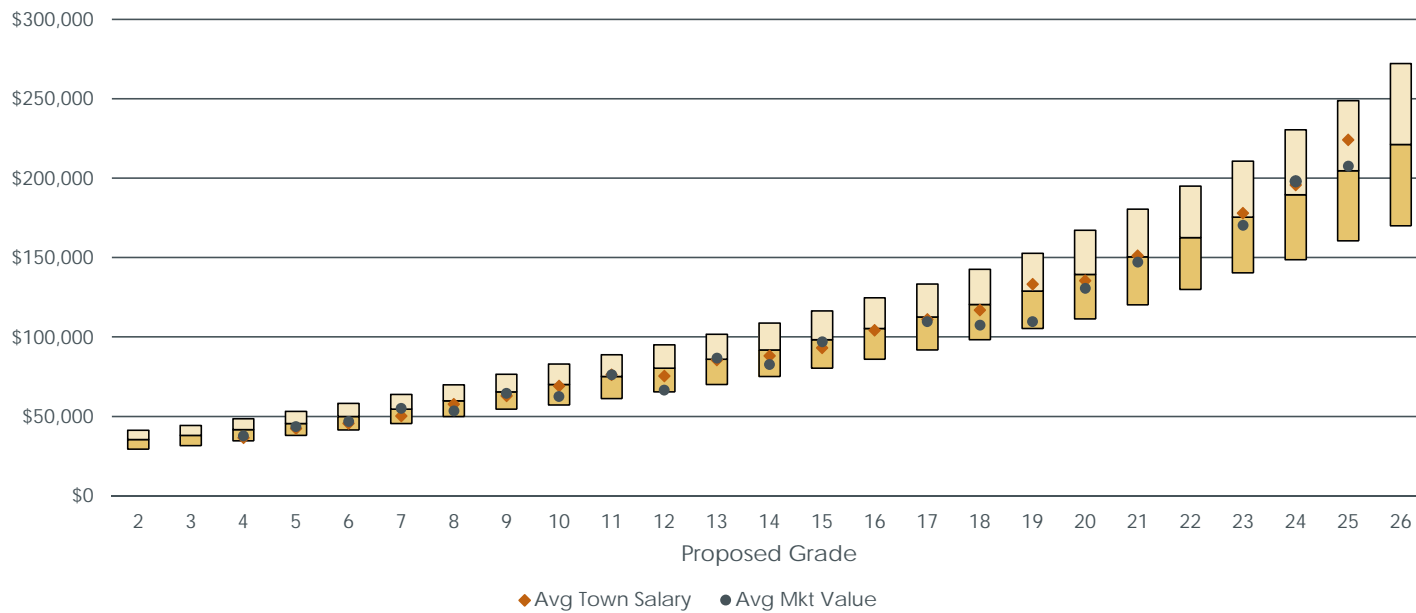
## Implementation Considerations & Criteria

- ❖ All employees will be paid at least at the new minimums
- ❖ Employee pay placement in the range will be maintained, but will be capped at 10%
- ❖ All employees receive the market adjustment, which is estimated to be between 2-3%
- ❖ Sworn employees will maintain their current step
- ❖ If current salary exceeds new range maximum, pay frozen until range increases to include salary; increase paid as a lump sum
- ❖ Total cost of implementation is currently being evaluated and will be part of FY23 budget approvals.

# PROPOSED IMPLEMENTATION COSTS

## New Salaries in New Structure

Town of Queen Creek  
Proposed Average Salaries & Average Market Data in Proposed Salary Structure



# ADMINISTRATIVE RECOMMENDATIONS

## Maintenance of the compensation system

- ❖ Annual adjustments to the salary structure based on cost of labor changes
  - Helps to ensure the salary structure remain externally competitive
  - Sources:
    - Use of published survey data (WorldatWork's annual Salary Budget Survey)
    - City survey of comparator organizations
    - Employment Cost Index (ECI) for Local Government Workers and Consumer Price Index (CPI) for the Western Region
  
- ❖ Annual increases in employee pay
  - Helps to ensure employee pay aligns with market movement
  - Supports retention and employee value to organization
  
- ❖ Conduct a salary survey approximately every three (3) years
  - Validate competitiveness of the pay system with City's comparator market to ensure alignment with desired market position

# QUESTIONS





# Thank You

Lori Messer, Principal



480.431.4702



Lori.Messer@LogicCompGroup.com



<https://logiccompgroup.com>

