



AMENDED AGENDA
Queen Creek Town Council Regular Session
Community Chambers, 20727 E Civic Parkway
April 20, 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 April 20, 2022 Town Council meeting:

- *Email: Submit a comment to 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. Queen Creek Roots N' Boots Rodeo Performer Emily Hinkle (Singing the Star Spangled Banner). *-New Item*

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. Parks and Recreation Advisory Committee (April 12, 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 by 6:30 p.m. on April 20, 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 Expenditures over \$25,000. (FY 21/22 Budgeted Items)
 - 1. Freightliner - Street Sweeper: \$266,230 (Public Works) Maricopa Association of Governments (MAG) awarded Queen Creek FY2022 CMAQ funding up to the amount of \$251,055 and the Town's match on this grant is \$15,175.
 - 2. John Thomas Inc (JTI) - Four (4) Solar Powered Portable Traffic Signals: \$200,000 (Public Works-Traffic)
- B. Consideration and possible approval of the "Final Plats" for Madera Phases 3A & 3B, a request by QC320 Residential Land IV LP.
- C. Consideration and possible approval of the emergency procurement for repair work to the sound system at Horseshoe Park & Equestrian Centre by CCS Presentation Systems in an amount not to exceed \$74,773 and the necessary budget adjustments.
- D. Consideration and possible approval of an Intergovernmental Agreement between The Town of Queen Creek and the Queen Creek Unified School District (QCUSD) for contribution toward the construction of Traffic Signal: QCUSD Crismon High School and Riggs Road (CIP project I0049) in the amount of \$375,000 and the necessary budget adjustments.
- E. Consideration and possible approval of an Intergovernmental Agreement between the Town of Queen Creek and the Arizona Child Abduction Response Team (AZCART) to provide a pool of specialized investigators for cases involving abducted or at-risk missing children.

- F. Consideration and possible approval of a Cooperative Purchase Agreement (CPA) with Flock Group, LLC for a fixed camera ALPR solution utilizing the City of Tempe contract not to exceed \$46,000. (FY 21/22 Budgeted Item)
 - G. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Engineering Plan Review Services with up to four possible one-year renewals, with Entellus, Inc.; Michael Baker International, Inc.; Sunrise Engineering Inc.; Westwood Professional Services.
 - H. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Environmental & Cultural Review Services with up to four possible one-year renewals, with AZTEC Engineering Group; Logan Simpson Design, Inc.; Terracon Consultants, Inc.; Western Technologies, Inc.
 - I. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Landscape Architecture Services with up to four possible one-year renewals, with AZTEC Engineering Group; Dig Studio; Environmental Planning Group, LLC; Gavan & Barker, Inc.; J2 Engineering & Environmental Design. LLC; Kimley-Horn and Associates, Inc.
 - J. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Storm Water Management Services with up to four possible one-year renewals, with Entellus, Inc.; EPS Group Inc.; HilgartWilson LLC; J2 Engineering & Environmental Design LLC; Michael Baker International, Inc.
 - K. Consideration and possible approval of a one-year On-Call Professional Services Contracts for Survey Services with up to four possible one-year renewals, with Bowman Consulting Group Ltd.; Dibble & Associates Consulting Engineers, Inc.; Sunrise Engineering, Inc.
 - L. Consideration and possible approval of Delegation Resolution 1456-22 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 ASLD Infrastructure Improvements (CIP project AR100) that will cover the area from Germann Road north to SR24 and from Meridian Road to Kenworthy Road, in the Arizona State Lands portion of the Town in an amount not to exceed \$2,000,000 and the necessary budget adjustments.
 - M. Consideration and possible approval of Ordinance No. 784-22, an Ordinance of the Mayor and Council of the Town of Queen Creek, Arizona, amending and creating certain section of Chapter 7 Buildings and Building Regulations and amending Chapter 9 Offenses; and provide for consistency and proper coordination between amended Chapters of the Town Code, and between the impacted Town departments and the police department; providing for penalties and permit processes; and providing for repeal of conflicting ordinances.
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 (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). 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 (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). 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. Public hearing for Case P21-0168 Mayberry on Rittenhouse Annexation, a proposed annexation of approximately 1.42 acres, east of the southeast corner of Sossaman and Rittenhouse roads.

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. Discussion and presentation on an update to the request for Permanent Base Adjustment. - *New Item*

B. Discussion and update on Town events and outreach programs. -*New Item*

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 (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). 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. Consideration and possible approval of Resolution 1454-22 authorizing the refinancing and redemption of a 2008 Water Infrastructure Finance Authority of Arizona (“WIFA”) Drinking Water Loan and accelerating the refinancing and redemption of the loan by declaring an emergency due to the timing of the market and to benefit from a positive net present value savings over the life of the loan.

13. Adjournment:

I, Maria Gonzalez, do hereby certify that I caused to be posted this 19th day of April, the Agenda for the April 20, 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.

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.

Council Committee Reports

- 03/17- 03/20 – Roots n’ Boots Rodeo (Barney, Brown, Benning, Oliphant)
- 03/21 – Pinal Regional Transportation Authority Board Meeting (Benning)
- 03/21 – Meeting with Pinal County Supervisor Mike Goodman (Barney, Brown)
- 03/22 – Joint Meeting with Queen Creek Unified School District Governing Board (Barney, Brown, Benning, Martineau, Oliphant)
- 03/23 – Maricopa Association of Governments Regional Council Meeting (Barney)
- 03/24 – Queen Creek Unified School District Community and Family Engagement Event (Oliphant)
- 03/24 – Valley Metro Board Meeting (Benning)
- 03/24 – Gilbert State of the Town (Barney, Brown)
- 03/26 – Spring into QC (Brown, Benning, Oliphant, Wheatley)
- 03/31 – Queen Creek Coffee with a Cop (Barney, Brown, Oliphant)
- 04/01 – Queen Creek Unified School District Frances Brandon-Pickett A+ School of Excellence Award Celebration (Wheatley)
- 04/02 – Homes for our Troops Kick-off Event (Barney, Benning)
- 04/02 – Roots n’ Boots Royalty Coronation (Benning)
- 04/05 – Maricopa Association of Governments Economic Development Committee (Oliphant)





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: April 20, 2022

Suggested Action:

To approve the Expenditures \$25,000 and over.

Discussion:

The following items being request are:

1. Freightliner. - Street Sweeper: \$266,230 (Public Works)
2. John Thomas Inc (JTI) - Four (4) Solar Powered Portable Traffic Signals: \$200,000 (Public Works-Traffic)

Fiscal Impact:

The fiscal impact of the requested spending authority for the above expenditures is \$466,230. Funds have been identified within the line item budget as approved in the FY22 budget or subsequently approved by Council.

Attachment(s):

1. [April 20, 2022 Expenditures over \\$25k.pdf](#)

**Attachment: Expenditures \$25,000 and Over
Budgeted in Fiscal Year 21/22
April 20, 2022**

Item #	Vendor(s)	Description	Purpose	Requesting Dept(s)	Fiscal Impact \$	Procurement Method	Alternative
1	Freightliner	Street Sweeper	Maricopa Association of Governments (MAG) awarded Queen Creek FY2022 CMAQ funding up to the amount of \$251,055 for the purchase of a 2022 Freightliner M2106 Street Sweeper. The Town's match on this grant is \$15,175. The Town will purchase the unit and MAG will reimburse funds after we take delivery.	Public Works	\$266,230	State Contract #CTR041810	Council could choose not to approve the expenditure. The impact of this action would be that the MAG funding would be forfeited and the cost to purchase a street sweeper would be at the Town's full cost.
2	John Thomas Inc (JTI)	(4) Solar Powered Portable Traffic Signals	Spending authority for the purchase of two sets, four in total, of solar powered portable traffic signals not to exceed \$200,000	Public Works	Not to exceed \$200,000	Single Source	Council could choose not to approve the expenditure. The impact of this action could mean that we would need to rent temporary signals, and there is no guarantee of availability. We could potentially go out to bid for these items; however, we would not make the necessary timeline for the project that is requiring this equipment.



TOWN OF
QUEEN CREEK
 ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, CHRIS DOVEL, TOWN ENGINEER, MARC PALICHUK, PRINCIPAL ENGINEER

RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE "FINAL PLATS" FOR MADERA PHASES 3A & 3B, A REQUEST BY QC320 RESIDENTIAL LAND IV LP.

DATE: April 20, 2022

Suggested Action:

Staff recommends approval of the "Final Plats" for Madera Phases 3A & 3B, a request by QC320 Residential Land IV LP.

Relevant Council Goal(s):

Superior Infrastructure

Discussion:

History:

Sept. 21, 2016

- Town Council approved Malone Place (now known as Madera) PAD Rezone (Ordinance 621-16).

Dec. 5, 2017

- Planning Commission recommended approval of Madera Minor General Plan Amendment (P17-0145), and PAD Rezone (P17-0110).

Dec. 20, 2017

- Town Council approved the Master Plat of Madera.

Aug. 7, 2019

- Town Council approved Madera Phases 1A & 1B Final Plats.

Aug. 19, 2020

- Town Council approved Madera Phases 2A & 2B Final Plats.

Background:

The applicant is requesting approval of the Madera Phases 3A & 3B Final Plats. Madera Phase 3A

consists of 194 lots and Phase 3B consists of 87 lots. Madera Phases 3A & 3B lie on approximately 90.4 acres located at the southwest corner of Queen Creek Road and Meridian Road. The subdivision has underlying R1-5 PAD & R1-7 PAD zoning with a density of 3.15 homes per acre. This is consistent with the General Plan Land Use Map, which established Neighborhood Residential that allows up to 20 DU/AC.

The Developer will complete the onsite infrastructure improvements for Phases 3A & 3B simultaneously. Madera Phases 3A & 3B provides 1 point of access onto Meridian Road and 4 points of access into Madera Phase 2. Offsite roadway improvements to Meridian Road and Queen Creek Road will be constructed with the project.

Fiscal Impact:

The Town will receive building permit fees for all homes that develop within the 281-lot subdivision. The Owner (QC320 Residential Land IV LP) will complete onsite & offsite improvements that will require future maintenance costs by the Town.

Alternatives:

Not to accept the Final Plat of Madera Phases 3A & 3B. If the Town does not accept the Final Plat, the subdivision will not be developed at this time and the Town will not collect permit fees.

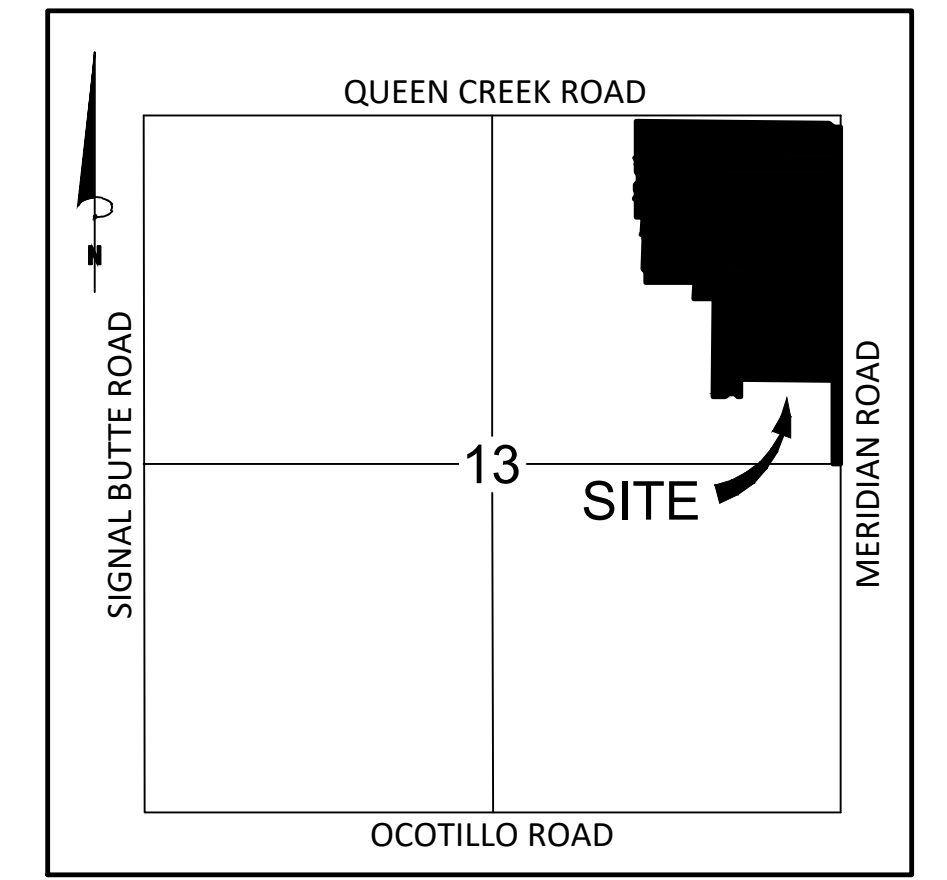
Attachment(s):

1. [Aerial Exhibit - Madera Subdivision.pdf](#)
2. [Final Plat - Madera Phase 3A.pdf](#)
3. [Final Plat - Madera Phase 3B.pdf](#)



FINAL PLAT OF MADERA PHASE 3A

A REPLAT OF PORTIONS OF TRACTS "3A", "3C", AND "7C", AND TRACTS "3B", "3D", AND "3E" OF "MASTER PLAT OF MADERA",
ACCORDING TO BOOK 1361 OF MAPS, PAGE 7, RECORDS OF MARICOPA COUNTY, ARIZONA,
LOCATED IN THE NORTH HALF OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 EAST,
OF THE GILA AND SALT RIVER BASE AND MERIDIAN,
MARICOPA COUNTY, ARIZONA.



VICINITY MAP
N.T.S.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

THAT QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AND QC320 RESIDENTIAL LAND II LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AS OWNERS, HAVE SUBDIVIDED UNDER THE NAME "MADERA PHASE 3A", A REPLAT OF PORTIONS OF TRACTS "3A", "3C", AND "7C", AND TRACTS "3B", "3D", AND "3E" OF "MASTER PLAT OF MADERA", ACCORDING TO BOOK 1361 OF MAPS, PAGE 7, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN THE NORTH HALF OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON, AND DO HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF SAID "MADERA PHASE 3A", AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATIONS AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS, STREETS AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME GIVEN TO EACH, RESPECTIVELY ON SAID PLAT, AND THAT QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AND QC320 RESIDENTIAL LAND II LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AS OWNERS, HEREBY DEDICATE TO THE PUBLIC FOR USE AS SUCH STREETS, AND OTHER EASEMENTS AS SHOWN ON SAID PLAT AND INCLUDED IN THE ABOVE DESCRIBED PREMISES.

OWNERS HEREBY DEDICATE AND CONVEY TO THE TOWN OF QUEEN CREEK ALL REAL PROPERTY DESIGNATED ON THIS PLAT AS "RIGHT-OF-WAY" (R/W) FOR USE AS PUBLIC RIGHT-OF-WAY.

ALL TRACTS THAT WILL NOT BE CONVEYED TO THE TOWN OF QUEEN CREEK AND ALL COMMON PROPERTY SHALL BE IMPROVED IN ACCORDANCE WITH PLANS APPROVED BY THE TOWN OF QUEEN CREEK AND SHALL BE CONVEYED BY WARRANTY (OR SPECIAL WARRANTY) DEED TO THE MADERA COMMUNITY MASTER ASSOCIATION. THE MADERA COMMUNITY MASTER ASSOCIATION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON PROPERTY.

TRACTS "7A", "7B", "7C", "7D", "7E", "7E2", "7E3", "7F", "7G", "7H", "7I", "7J", "7K", "8A", "8B", "8C", "8D", "8E", "8F", "8G", "8H", "8I", "8J", "8K", AND "8L" ARE NOT DEDICATED TO THE PUBLIC, BUT ARE PLATTED AS COMMON PROPERTY FOR THE USE AND ENJOYMENT OF THE MADERA COMMUNITY MASTER ASSOCIATION AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

THE MAINTENANCE OF LANDSCAPING WITHIN THE PUBLIC RIGHT-OF-WAY TO BACK OF CURB INCLUDING MEDIANS SHALL BE THE RESPONSIBILITY OF THE MADERA COMMUNITY MASTER ASSOCIATION OR ADJUTING PROPERTY OWNER.

ALL PROPERTY, AMENITIES AND FACILITIES PROPOSED TO BE MAINTAINED BY THE MADERA COMMUNITY MASTER ASSOCIATION ARE HEREWIT PLATTED AS COMMON PROPERTY WITH AN UNDIVIDED INTEREST OWNED IN COMMON BY EACH PARCEL OWNER.

EASEMENTS ARE GRANTED FOR THE PURPOSES SHOWN HEREON.

IN WITNESS WHEREOF:

QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AND QC320 RESIDENTIAL LAND II LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AS OWNERS, HAVE HEREUNTO CAUSED THEIR NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE OFFICERS LISTED BELOW, THEREUNTO DULY AUTHORIZED.

QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP

BY: _____

NAME: _____

ITS: _____

AND

QC320 RESIDENTIAL LAND II LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP

BY: _____

NAME: _____

ITS: _____

ACKNOWLEDGMENT

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

ON THIS _____ DAY OF _____, 2022, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____, WHO ACKNOWLEDGED SELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

ACKNOWLEDGMENT

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

ON THIS _____ DAY OF _____, 2022, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____, WHO ACKNOWLEDGED SELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

NOTES

- NO STRUCTURES OR VEGETATION OF ANY KIND MAY BE CONSTRUCTED OR ANY VEGETATION PLANTED NOR ALLOWED TO GROW WITHIN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES OR EASEMENTS WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER OR THROUGH THE EASEMENTS THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN. THE TOWN MAY, IF IT SO DESIRES, CONSTRUCT AND/OR MAINTAIN DRAINAGE FACILITIES ON OR UNDER THE LAND OF THE EASEMENT.
- IN EASEMENTS FOR THE EXCLUSIVE USE OF WATER, SANITARY SEWER, OR ANY COMBINATION THEREOF, ONLY GROUND COVER AND BUSHES ARE ALLOWED TO BE PLANTED WITHIN THE EASEMENT AREA. NO TREES ARE ALLOWED.
- ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND WITH THE EXCEPTION OF POWER LINES WHICH ARE 69KV LINES OR MORE.
- 69KV ELECTRICAL LINES MUST BE RELOCATED OUTSIDE OF THE RIGHT-OF-WAY OR TO THE EDGE OF THE RIGHT-OF-WAY.
- ELECTRICAL LINES SHALL BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- CONSTRUCTION WITHIN UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES AND DRIVEWAYS.
- ALL RETENTION BASINS MUST BE MAINTAINED TO DRAIN WITHIN (36) THIRTY-SIX HOURS AFTER ANY STORM EVENT UP TO AND INCLUDING THE 100-YEAR 2 HOUR STORM. THE OWNERS OF ANY SUCH BASINS FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASINS INTO COMPLIANCE.
- THE TOWN OF QUEEN CREEK IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF ANY LANDSCAPED AREAS WITHIN THIS PROJECT. THE MADERA COMMUNITY MASTER ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTENANCE OF ALL LANDSCAPED ISLANDS AND MEDIANS AND THE MAINTENANCE OF LANDSCAPING WITHIN TRACTS "7A", "7B", "7C", "7D", "7E", "7E2", "7E3", "7F", "7G", "7H", "7I", "7J", "7K", "8A", "8B", "8C", "8D", "8E", "8F", "8G", "8H", "8I", "8J", "8K", AND "8L" SHALL BE THE RESPONSIBILITY OF THE MADERA COMMUNITY MASTER ASSOCIATION.
- THIS SITE, DUE TO ITS PROXIMITY TO PHOENIX MESA GATEWAY AIRPORT, IS LIKELY TO EXPERIENCE AIRCRAFT OVERFLIGHTS, WHICH COULD GENERATE NOISE LEVELS WHICH MAY BE OF CONCERN TO SOME INDIVIDUALS. THE MIX OF AIRCRAFT TRAFFIC CONSISTS OF CARGO, COMMERCIAL, SCHOOL, CROP DUSTING, CHARTER, CORPORATE, GENERAL AVIATION AND MILITARY AIRCRAFT.
- THIS SITE IS NEAR CROP DUSTING OPERATIONS. GENERAL AGRICULTURE OPERATIONS ALSO EXIST IN THE AREA AND THIS SITE MAY BE SUBJECT TO NOISE, DUST AND POSSIBLY ODORS NORMALLY ASSOCIATED WITH AGRICULTURAL OPERATIONS. ADDITIONALLY, THIS SITE IS LOCATED IN AN AREA WHERE THERE ARE AIRCRAFT OPERATIONS ASSOCIATED WITH AGRICULTURE.
- THIS SITE IS IN CLOSE PROXIMITY TO FUTURE COMMERCIAL DEVELOPMENT, AND MAY EXPERIENCE NOISE FROM DELIVERIES, TRAFFIC, LIGHTS AND PARKING ISSUES RELATED TO THE OPERATION OF THESE COMMERCIAL PROPERTIES.
- LOT, TRACT, PARCEL AND, CENTERLINE MONUMENTATION ARE OR WILL BE PERMANENTLY SET BY COMPLETION OF CONSTRUCTION, BY THE RESPONSIBLE SURVEYOR HIRED BY _____, OR THEIR ASSIGNEE.
- THIS SUBDIVISION IS WITHIN AN AIRPORT IMPACT OVERLAY DISTRICT.

ASSURED WATER SUPPLY

THE ARIZONA DEPARTMENT OF WATER RESOURCES HAS GRANTED A CERTIFICATE OF ASSURED WATER SUPPLY, DWR FILE NO. _____

ASSURANCE STATEMENT

ASSURANCE IN THE FORM OF A CASH, PERFORMANCE OR SUBDIVISION BOND OR IRREVOCABLE LETTER OF CREDIT IN AN AMOUNT OF \$ _____ HAS BEEN DEPOSITED WITH THE TOWN ENGINEERING MANAGER TO GUARANTEE CONSTRUCTION OF THE REQUIRED SUBDIVISION IMPROVEMENTS.

HOMEOWNERS RATIFICATION

BY THIS RATIFICATION _____, DULY ELECTED PRESIDENT OF THE MADERA COMMUNITY MASTER ASSOCIATION ACKNOWLEDGES THE RESPONSIBILITIES DEDICATED HEREIN.

SIGNATURE _____ DATE _____

DEED RESTRICTIONS

COVENANTS, CONDITIONS AND RESTRICTIONS FOR MADERA, QUEEN CREEK, ARIZONA ARE RECORDED IN DOCUMENT NO.2020-018100, MARICOPA COUNTY RECORDS, ARIZONA.

SHEET INDEX

- COVER, NOTES, DEDICATION, SITE DATA, BASIS OF BEARINGS, CERTIFICATIONS
- KEY MAP, TYPICAL LOT DETAILS, TYPICAL VISIBILITY EASEMENT DETAIL
LOT TABLE, TRACT TABLE, LINE & CURVE TABLES
- 3-8 FINAL PLAT PLAN SHEETS

OWNER

QC320 RESIDENTIAL LAND IV LP
7001 N SCOTTSDALE RD, SUITE 1015
SCOTTSDALE, AZ 85253
PHONE: (480) 315-2600
CONTACT: MICHELLE YERGER

OWNER

QC320 RESIDENTIAL LAND II LP
7001 N SCOTTSDALE RD, SUITE 1015
SCOTTSDALE, AZ 85253
PHONE: (480) 315-2600
CONTACT: MICHELLE YERGER

ENGINEER

BOWMAN
1600 N DESERT DRIVE, #210
TEMPE, AZ 85281
PHONE: (480) 629-8830
CONTACT: JOHN GRAY

SITE DATA

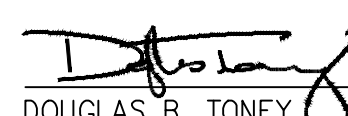
ZONING	R1-5 WITH PAD OVERLAY
NUMBER OF LOTS	194
GROSS AREA	2,630,991 SQ.FT. OR 60.3992 ACRES, MORE OR LESS
NET AREA	1,959,356 SQ.FT. OR 44.9806 ACRES, MORE OR LESS

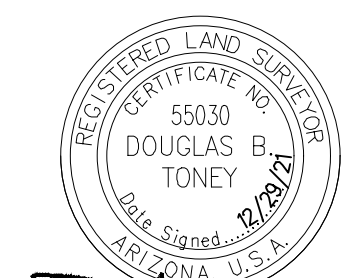
BASIS OF BEARINGS

NORTH 89 DEGREES 49 MINUTES 50 SECONDS WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, ACCORDING TO BOOK 1361 OF MAPS, PAGE 7, M.C.R.

SURVEYOR'S CERTIFICATION

THIS IS TO CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE AND THE MONUMENTS DESCRIBED HEREIN HAVE EITHER BEEN SET OR LOCATED AS DESCRIBED TO THE BEST OF MY KNOWLEDGE AND BELIEF.

 12/29/21
DATE
DOUGLAS B. TONEY
REGISTERED LAND SURVEYOR NO. 55030
BOWMAN
1600 N DESERT DRIVE, #210
TEMPE, AZ 85281



DEPARTMENT APPROVALS

BY: _____ DATE _____
TOWN ENGINEER

BY: _____ DATE _____
TOWN PLANNING ADMINISTRATOR

TOWN APPROVAL

APPROVED BY THE TOWN COUNCIL OF QUEEN CREEK, ARIZONA, THIS _____ DAY OF _____ 2022.

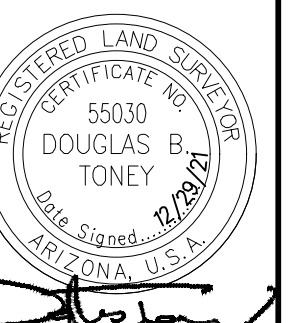
BY: _____ ATTEST: _____
MAYOR TOWN CLERK

FINAL PLAT
MADERA PHASE 3A
QUEEN CREEK, ARIZONA

Bowman
Bowman Consulting Group, Ltd.
1600 N Desert Drive, #210
Tempe, AZ 85281
Phone: (480) 629-8830
Fax: (480) 629-8841
www.bowman.com

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DATE: 12/29/21
PROJ NO: 050227-02
TASK NUM: 009
DRAWN BY: TL
CHECKED: DT
QUALITY: HT
CLIENT NO:
SCALE N.T.S.
1 of 7



FINAL PLAT
MADERA PHASE 3A
QUEEN CREEK, ARIZONA

DATE: 12/29/21
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 TASK NUM: 009
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 CHECKED: DT
 QUALITY: HT
 CLIENT NO:
 SCALE
 N.T.S.
 2 OF 8

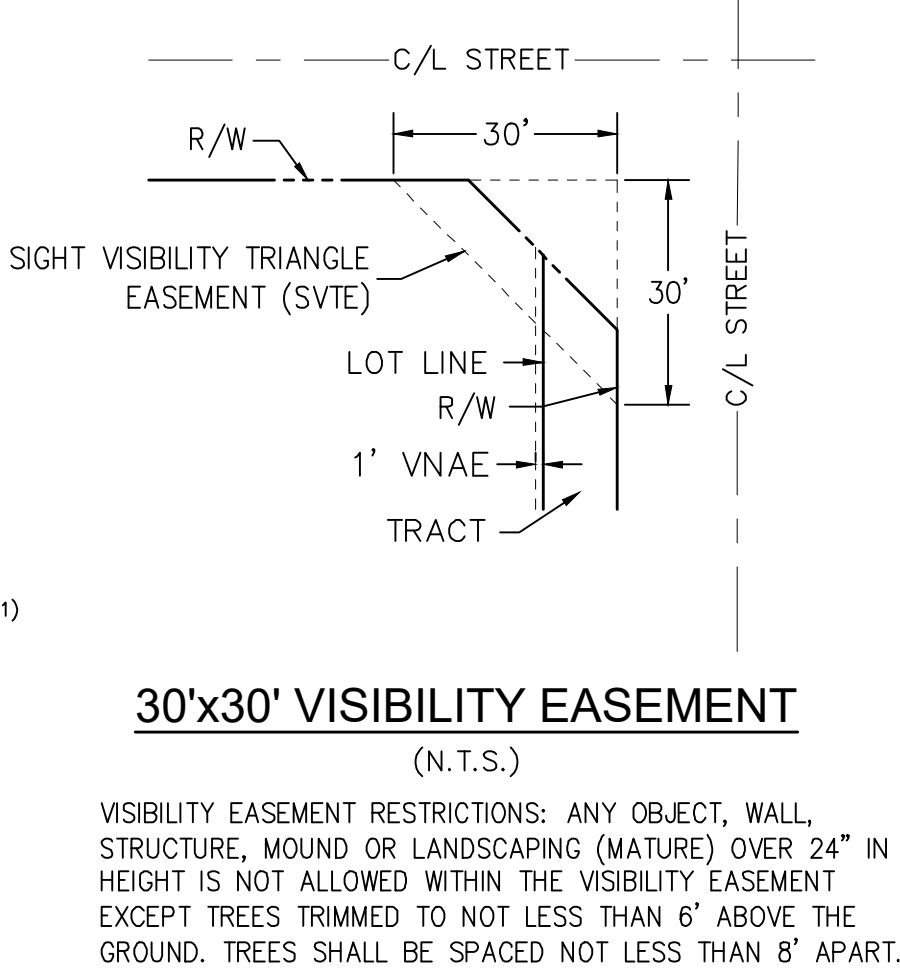
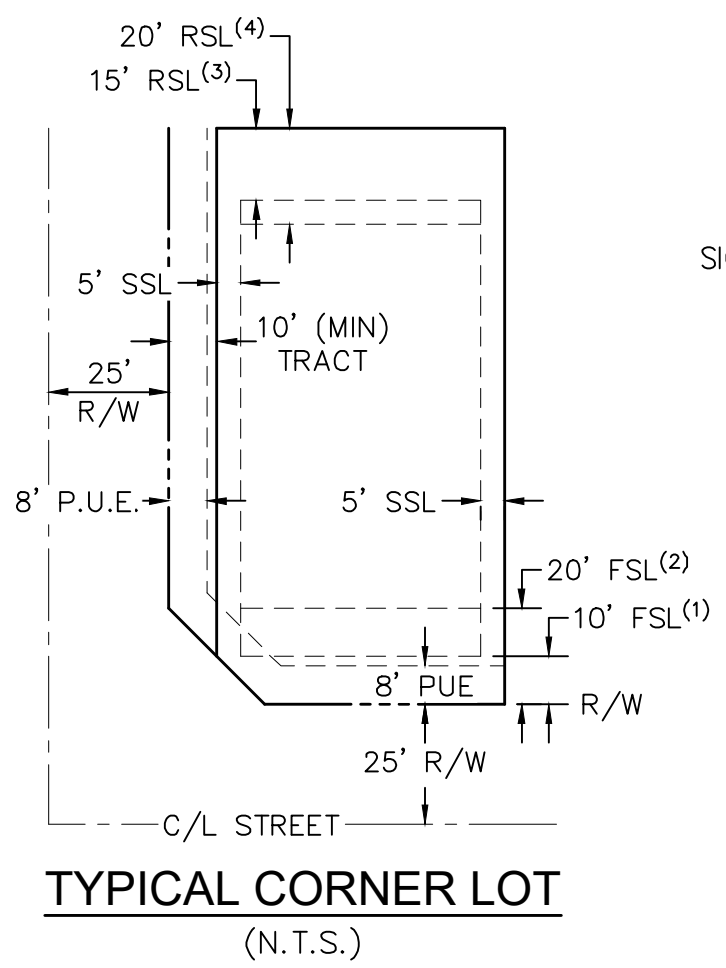
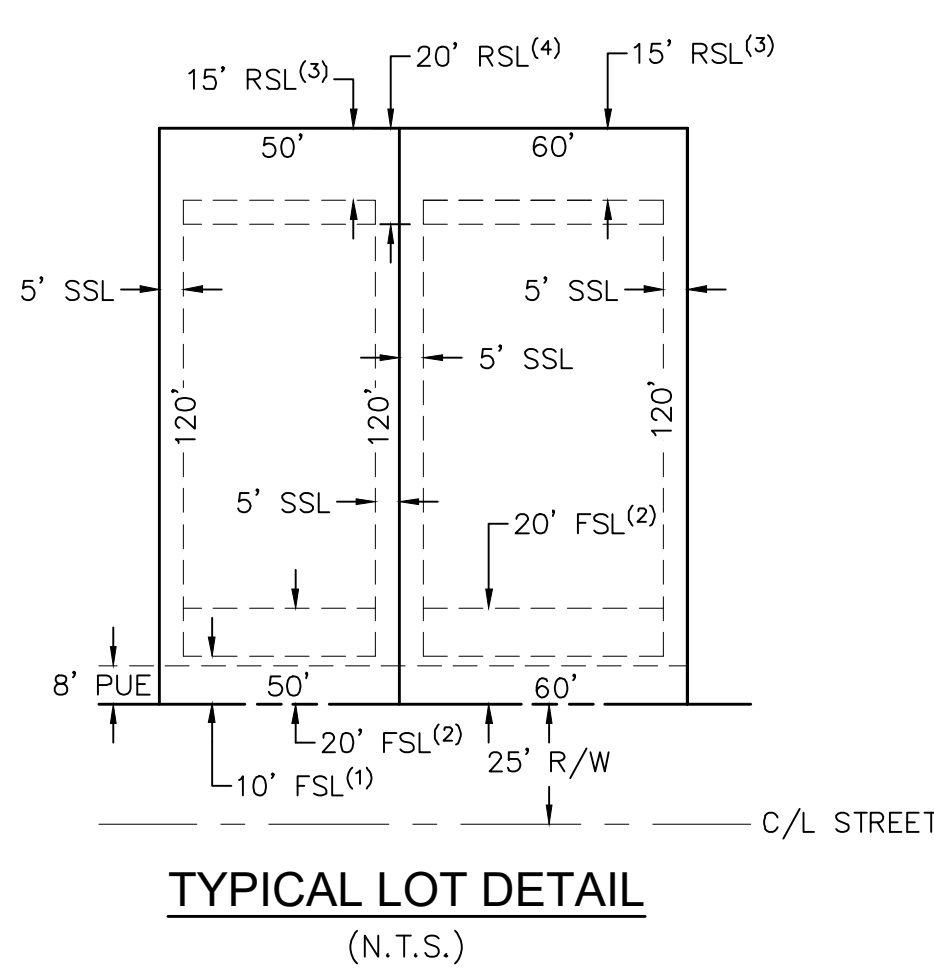
LOT AREA TABLE			LOT AREA TABLE			LOT AREA TABLE			LOT AREA TABLE			LOT AREA TABLE			LOT AREA TABLE			LOT AREA TABLE			LOT AREA TABLE		
LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES	LOT	SQ. FT.	ACRES
609	6,150	0.1412	634	5,999	0.1377	659	6,000	0.1377	684	6,000	0.1377	709	7,200	0.1653	734	7,150	0.1641	759	7,200	0.1653	784	7,200	0.1653
610	6,150	0.1412	635	5,999	0.1377	660	6,000	0.1377	685	6,000	0.1377	710	7,200	0.1653	735	7,200	0.1653	760	7,200	0.1653	785	7,150	0.1641
611	6,150	0.1412	636	6,138	0.1409	661	6,000	0.1377	686	6,000	0.1377	711	7,200	0.1653	736	7,200	0.1653	761	7,200	0.1653	786	7,150	0.1641
612	6,150	0.1412	637	6,150	0.1412	662	6,000	0.1377	687	6,000	0.1377	712	7,200	0.1653	737	7,200	0.1653	762	7,200	0.1653	787	7,200	0.1653
613	6,150	0.1412	638	6,150	0.1412	663	6,000	0.1377	688	6,000	0.1377	713	7,200	0.1653	738	7,200	0.1653	763	7,200	0.1653	788	7,200	0.1653
614	6,150	0.1412	639	6,150	0.1412	664	6,000	0.1377	689	5,950	0.1366	714	7,200	0.1653	739	7,200	0.1653	764	7,200	0.1653	789	7,200	0.1653
615	6,150	0.1412	640	6,150	0.1412	665	6,000	0.1377	690	5,950	0.1366	715	7,200	0.1653	740	7,200	0.1653	765	7,200	0.1653	790	7,200	0.1653
616	6,150	0.1412	641	6,150	0.1412	666	6,000	0.1377	691	6,000	0.1377	716	7,569	0.1738	741	7,200	0.1653	766	7,200	0.1653	791	7,200	0.1653
617	6,150	0.1412	642	6,150	0.1412	667	5,950	0.1366	692	6,000	0.1377	717	7,150	0.1641	742	7,200	0.1653	767	7,200	0.1653	792	7,200	0.1653
618	6,100	0.1400	643	6,150	0.1412	668	5,950	0.1366	693	6,000	0.1377	718	7,200	0.1653	743	7,200	0.1653	768	7,200	0.1653	793	7,200	0.1653
619	6,100	0.1400	644	6,150	0.1412	669	6,000	0.1377	694	6,000	0.1377	719	7,200	0.1653	744	7,200	0.1653	769	7,200	0.1653	794	7,150	0.1641
620	6,150	0.1412	645	6,000	0.1377	670	6,000	0.1377	695	6,000	0.1377	720	7,200	0.1653	745	7,200	0.1653	770	7,200	0.1653	795	7,150	0.1641
621	6,150	0.1412	646	6,000	0.1377	671	6,000	0.1377	696	7,591	0.1743	721	7,200	0.1653	746	7,200	0.1653	771	7,200	0.1653	796	7,200	0.1653
622	6,150	0.1412	647	6,000	0.1377	672	6,088	0.1398	697	7,200	0.1653	722	7,200	0.1653	747	7,200	0.1653	772	7,200	0.1653	797	7,200	0.1653
623	6,150	0.1412	648	6,000	0.1377	673	6,000	0.1377	698	7,200	0.1653	723	7,200	0.1653	748	7,200	0.1653	773	7,200	0.1653	798	7,200	0.1653
624	6,150	0.1412	649	6,000	0.1377	674	6,000	0.1377	699	7,200	0.1653	724	7,200	0.1653	749	7,200	0.1653	774	7,200	0.1653	799	7,200	0.1653
625	6,150	0.1412	650	6,000	0.1377	675	6,000	0.1377	700	7,200	0.1653	725	7,200	0.1653	750	7,150	0.1641	775	7,200	0.1653	800	7,200	0.1653
626	6,150	0.1412	651	6,000	0.1377	676	6,000	0.1377	701	7,200	0.1653	726	7,200	0.1653	751	7,150	0.1641	776	7,200	0.1653	801	7,200	0.1653
627	6,150	0.1412	652	6,001	0.1378	677	5,950	0.1366	702	7,200	0.1653	727	7,200	0.1653	752	7,200	0.1653	777	7,200	0.1653	802	7,415	0.1702
628	6,150	0.1412	653	6,000	0.1377	678	5,950	0.1366	703	7,200	0.1653	728	7,200	0.1653	753	7,200	0.1653	778	7,200	0.1653			
629	6,100	0.1400	654	6,000	0.1377	679	6,000	0.1377	704	7,200	0.1653	729	7,200	0.1653	754	7,150	0.1641	779	7,200	0.1653			
630	6,542	0.1502	655	5,950	0.1366	680	6,000	0.1377	705	7,200	0.1653	730	7,200	0.1653	755	7,150	0.1641	780	7,200	0.1653			
631	6,001	0.1378	656	6,000	0.1377	681	6,000	0.1377	706	7,200	0.1653	731	7,200	0.1653	756	7,200	0.1653	781	7,150	0.1641			
632	5,999	0.1377	657	6,000	0.1377	682	6,000	0.1377	707	7,200	0.1653	732	7,200	0.1653	757	7,200	0.1653	782	7,150	0.1641			
633	5,999	0.1377	658	6,000	0.1377	683	6,000	0.1377	708	7,200	0.1653	733	7,150	0.1641	758	7,200	0.1653	783	7,200	0.1653			

TRACT AREA TABLE			
TRACT	SQ. FT.	ACRES	DESCRIPTION
TRACT 7A	1,080	0.0248	LANDSCAPE, OPEN SPACE, PUE
TRACT 7B	1,080	0.0248	LANDSCAPE, OPEN SPACE, PUE
TRACT 7C	13,530	0.3106	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 7D	1,080	0.0248	LANDSCAPE, OPEN SPACE, PUE
TRACT 7E	51,106	1.1732	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE, SEWER EASEMENT, WATER EASEMENT
TRACT 7E2	8,983	0.2062	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE, SEWER EASEMENT
TRACT 7E3	1,050	0.0241	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 7F	52,287	1.2003	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 7G	52,590	1.2073	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE, ELECTRIC EASEMENT, WATER EASEMENT
TRACT 7H	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 7I	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 7J	9,971	0.2289	LANDSCAPE, OPEN SPACE, PUE
TRACT 7K	1,050	0.0241	LANDSCAPE, OPEN SPACE, PUE
TRACT 8A	339,930	7.8037	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE, ELECTRIC EASEMENT, OCID EASEMENT
TRACT 8B	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 8C	28,800	0.6612	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 8D	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 8E	67,226	1.5433	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE, SEWER EASEMENT
TRACT 8F	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 8G	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 8H	2,100	0.0482	LANDSCAPE, OPEN SPACE, PUE
TRACT 8I	1,050	0.0241	LANDSCAPE, OPEN SPACE, PUE
TRACT 8J	1,050	0.0241	LANDSCAPE, OPEN SPACE, PUE
TRACT 8K	14,400	0.3306	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 8L	1,050	0.0241	LANDSCAPE, OPEN SPACE, PUE

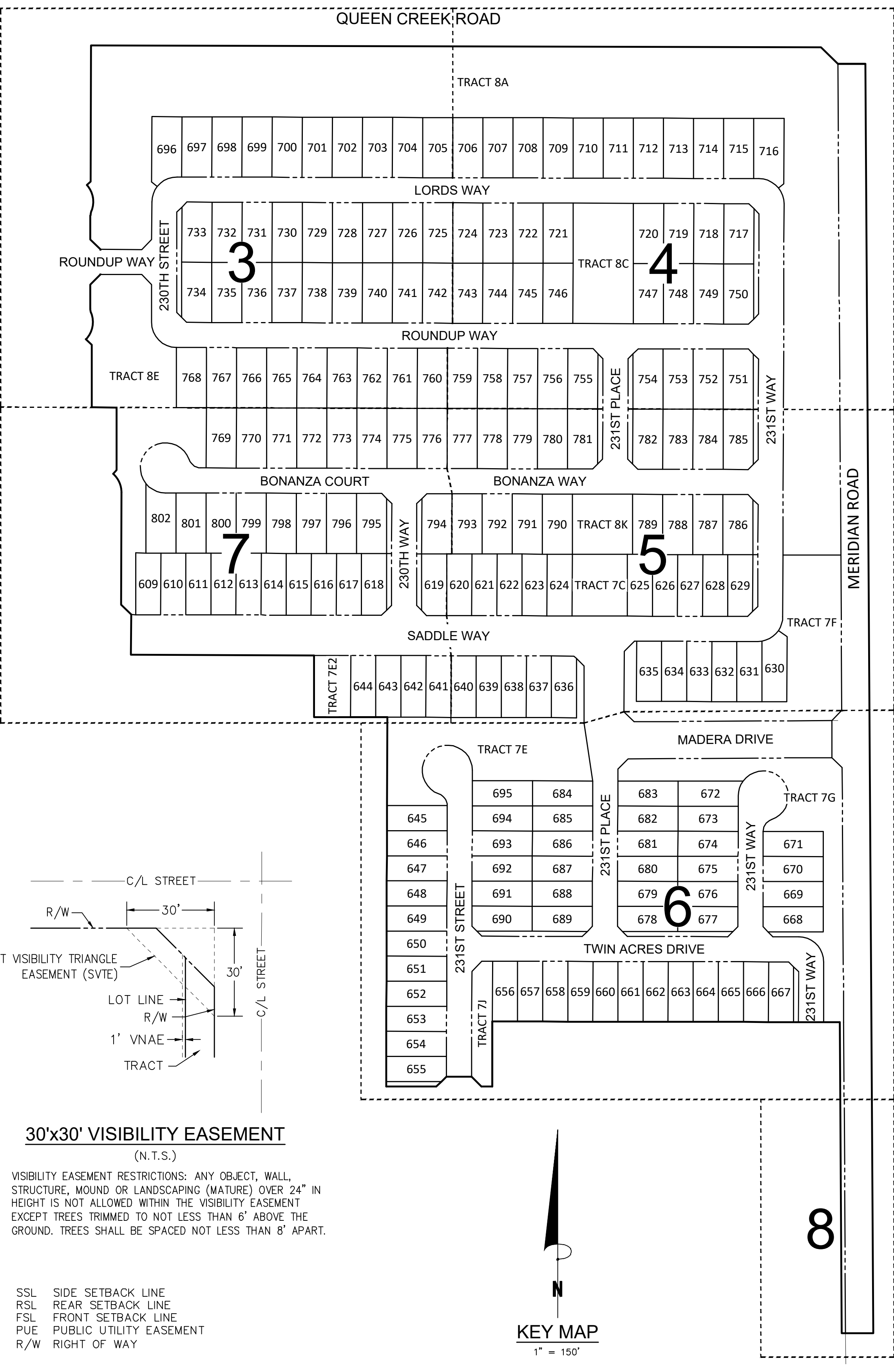
LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	21.60'	N89°53'08"W
L2	28.27'	N44°51'33"W
L3	14.15'	S45°08'27"W
L4	28.28'	N44°49'58"W
L5	10.21'	N41°48'03"E
L6	16.17'	N46°59'08"W
L7	28.28'	N45°10'02"E
L8	28.28'	N44°49'58"W
L9	10.21'	N48°32'01"E
L10	25.00'	N00°10'02"E
L11	25.00'	N89°49'58"W
L12	25.00'	N89°49'58"W
L13	14.51'	S51°30'44"E
L14	13.56'	S51°09'47"W
L15	21.01'	N55°32'46"W
L16	20.00'	N89°49'58"W
L17	10.00'	N89°49'58"W
L18	10.00'	N89°49'58"W
L19	10.00'	S89°49'58"E
L20	33.20'	S00°10'02"W
L21	26.66'	S00°10'02"W
L22	50.02'	N89°49'58"W
L23	50.98'	N89°49'58"W
L26	7.29'	N00°10'02"E

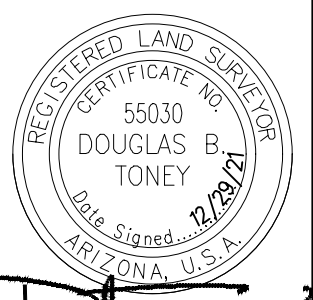
CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	42.21'	50.00'	048°21'59"
C2	55.75'	50.00'	063°53'13"
C3	9.18'	25.00'	021°02'22"
C4	9.18'	25.00'	021°02'22"
C5	54.69'	50.00'	062°40'11"
C6	78.54'	50.00'	090°00'00"
C7	78.54'	50.00'	090°00'00"
C8	78.54'	50.00'	090°00'00"
C9	30.77'	25.00'	070°31'44"
C10	218.63'	50.00'	250°31'44"
C11	218.63'	50.00'	250°31'44"
C12	30.77'	25.00'	070°31'44"
C13	30.77'	25.00'	070°31'44"
C14	218.63'	50.00'	250°31'44"
C15	78.54'	50.00'	090°00'00"
C17	78.54'	50.00'	090°00'00"

- LEGEND**
- FOUND SECTION MONUMENT AS NOTED
 - C/L MONUMENT TO BE SET PER MAG STANDARDS
 - ▲ SUBDIVISION CORNER TO BE SET PER MAG STANDARDS
 - R/W RIGHT OF WAY
 - M.C.R. MARICOPA COUNTY RECORDS
 - RLS REGISTERED LAND SURVEYOR
 - PUE PUBLIC UTILITY EASEMENT
 - ESMT SIGHT VISIBILITY TRIANGLE EASEMENT
 - VNAE VEHICULAR NON-ACCESS EASEMENT
 - SE SEWER EASEMENT
 - WE WATER EASEMENT
 - SUBDIVISION BOUNDARY
 - LOT / TRACT LINE
 - SECTION LINE
 - CENTER LINE
 - PARCEL LINE
 - EASEMENT AS NOTED
 - EASEMENT AS NOTED
 - RIGHT-OF-WAY LINE
 - SHEET MATCH LINE



NOTES
 10' FRONT SETBACK TO FRONT OF SIDE ENTRY GARAGE, LIVING SPACE & COVERED PORCH
 (1) 20' FRONT SETBACK TO FACE OF GARAGE
 (2) 15' REAR SETBACK FOR 50'x120', 60'x120' SINGLE STORY PRODUCTS OR COVERED PATIOS;
 (3) 20' REAR SETBACK FOR 50'x120', 60'x120' TWO STORY PRODUCTS
 SEE PAD FOR OTHER SETBACK NOTES



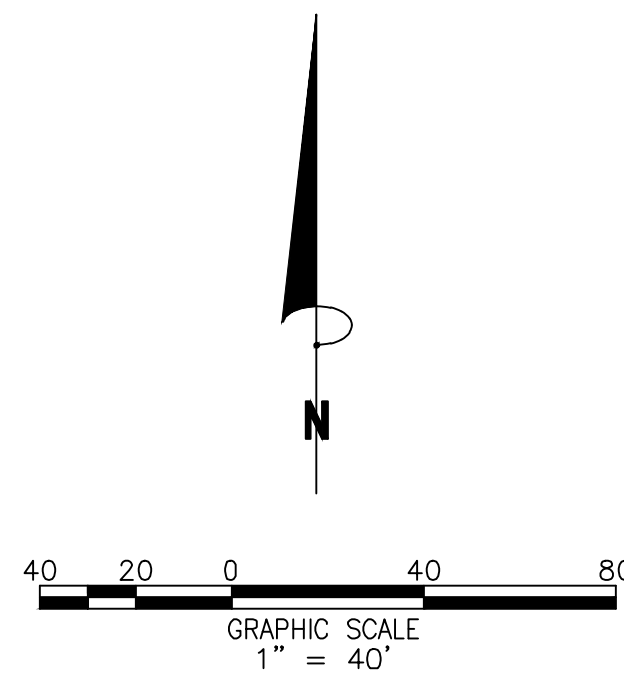
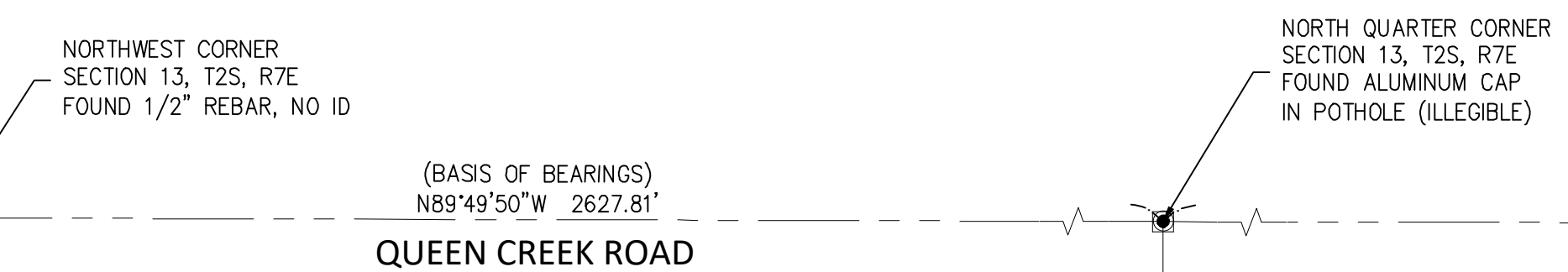
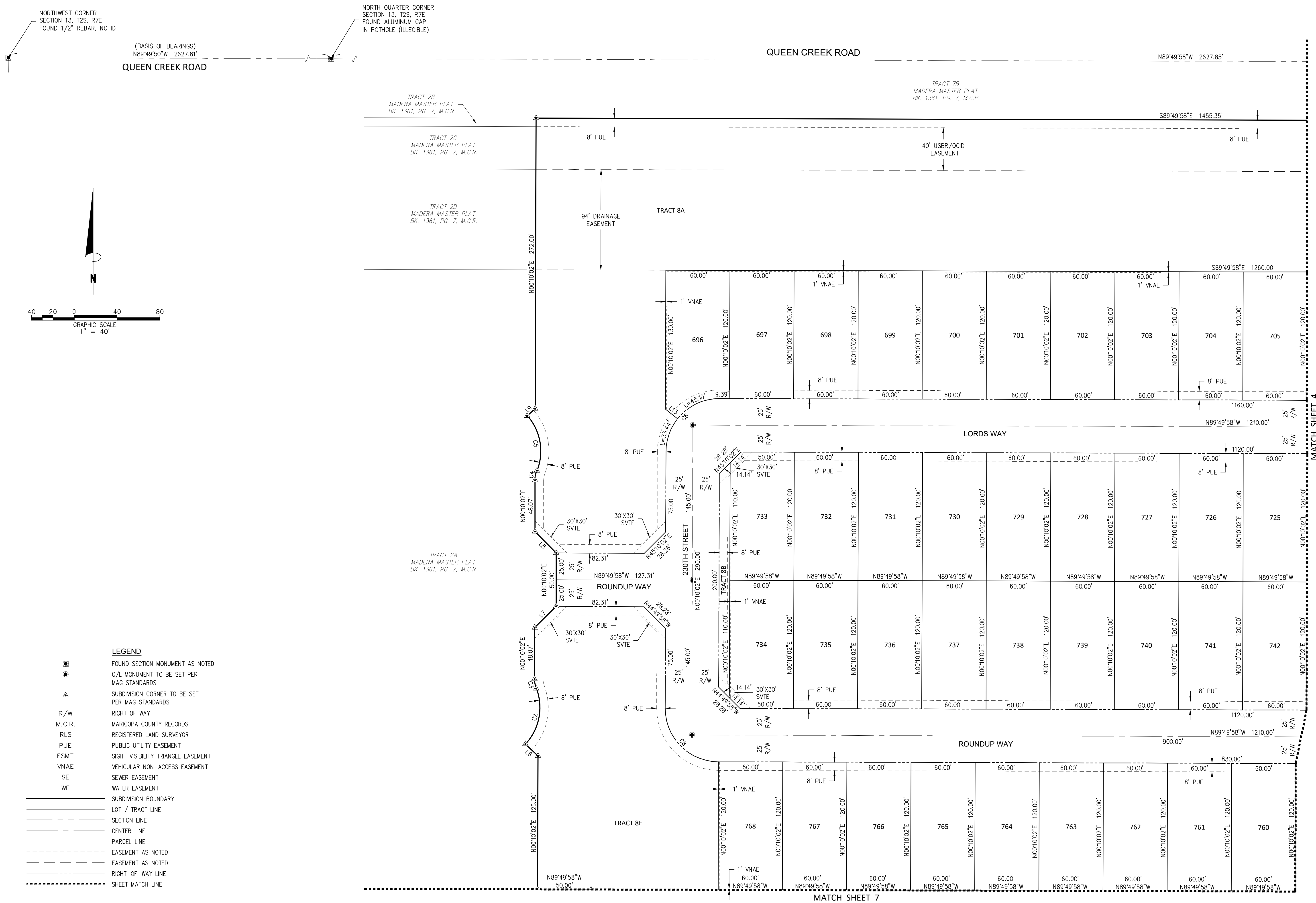


FINAL PLAT
MADERA PHASE 3A
QUEEN CREEK, ARIZONA

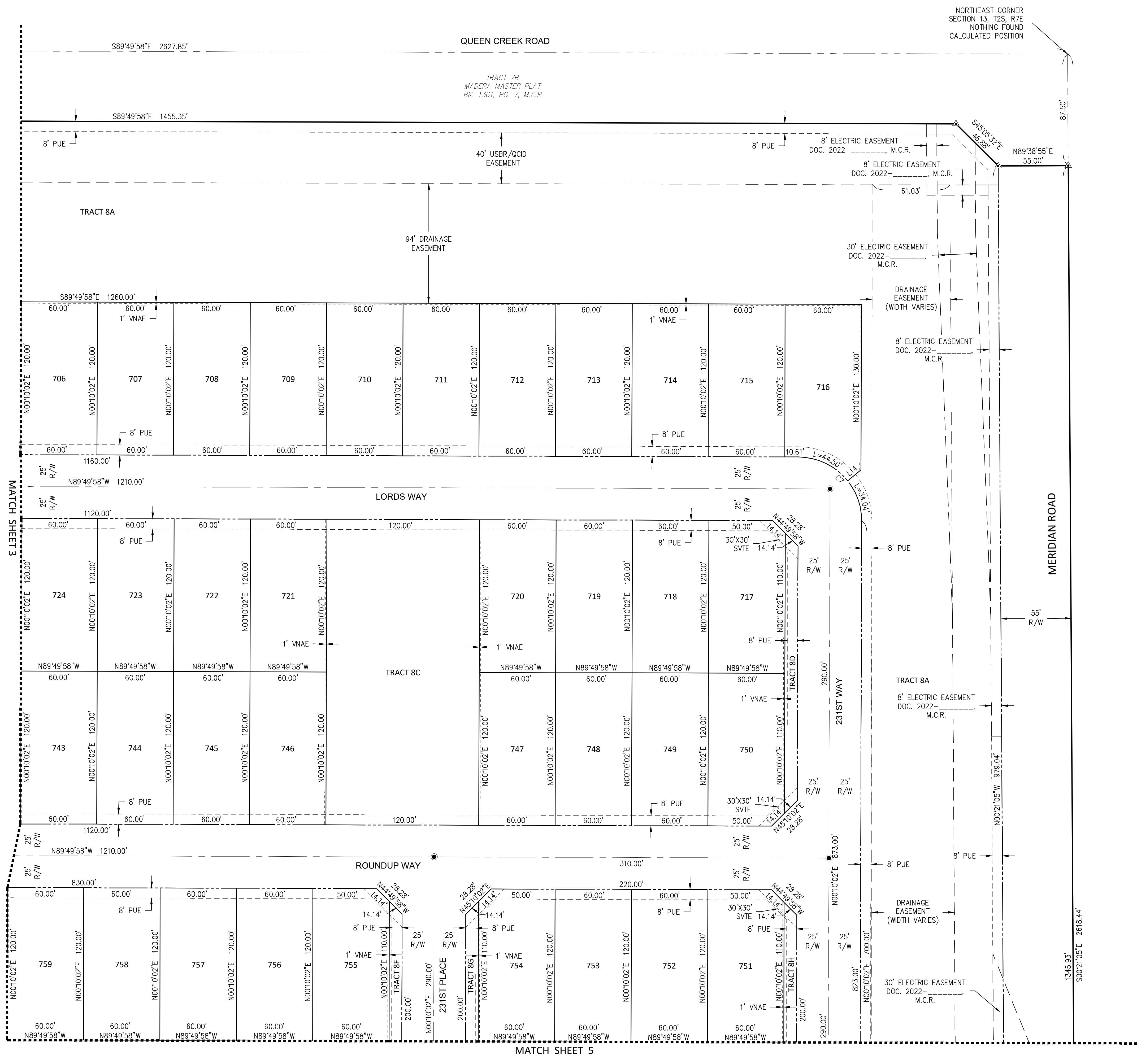
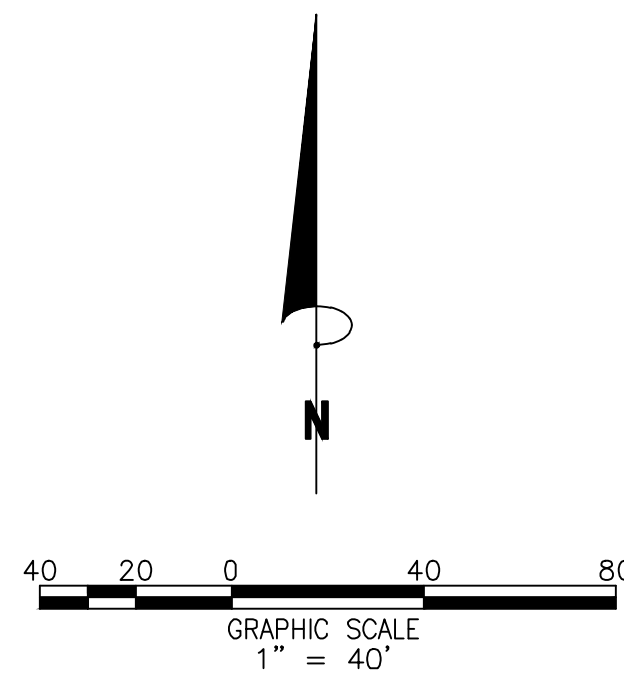
DATE: 12/29/21
 PROJ NO: 050227-02
 TASK NUM: 009
 DRAWN BY: TL
 CHECKED: DT
 QUALITY: HT
 CLIENT NO:

SCALE
 1" = 40'
 3 OF 8

File: C:\Temp\Projects\4256\050227-02-009-Phase 3A-Final Plat.dwg Plotfile: Dec 29, 2021

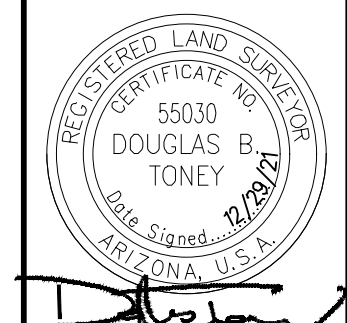


- LEGEND**
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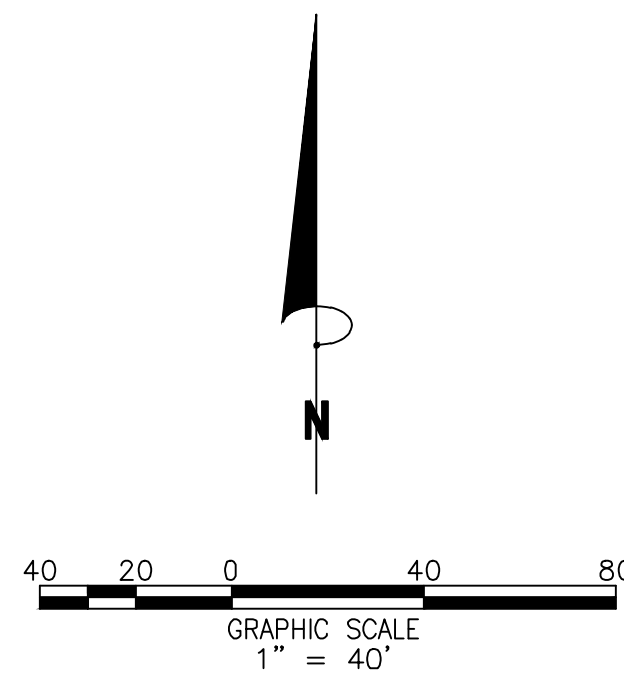
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**FINAL PLAT
 MADERA PHASE 3A
 QUEEN CREEK, ARIZONA**

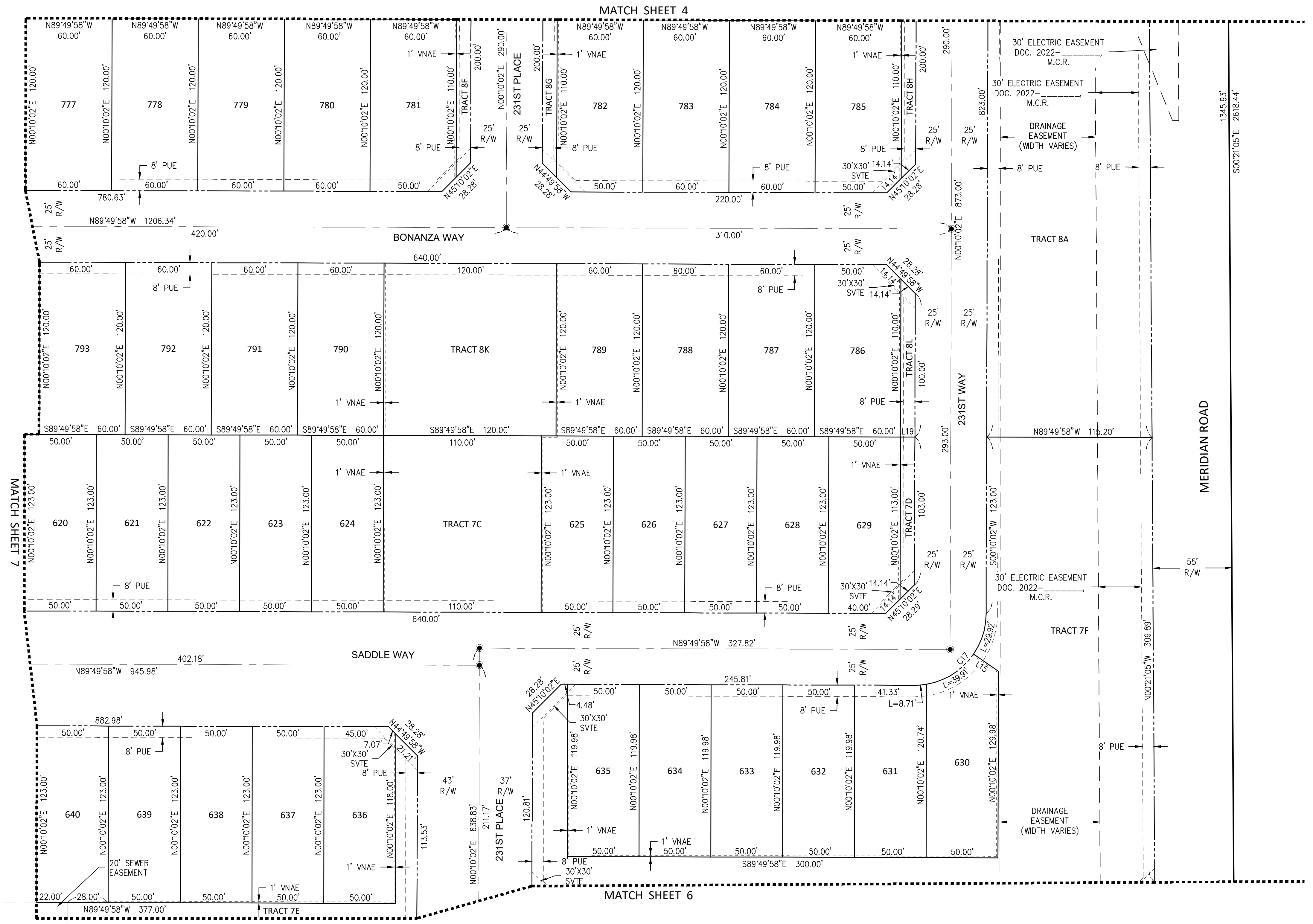
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PROJ NO:	050227-02
TASK NUM:	009
DRAWN BY:	TL
CHECKED:	DT
QUALITY:	HT
CLIENT NO:	
SCALE:	1" = 40'
	4 OF 8

File: C:\Temp\Projects\4258\050227-02-009-Phase 3A-Final Plat.dwg Plotfile: Dec 29, 2021



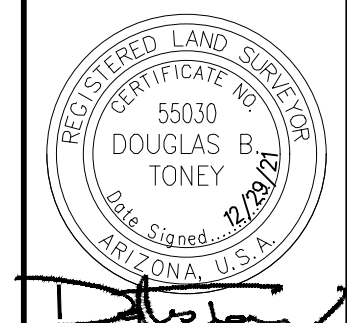
LEGEND

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- PARCEL LINE
- - - EASEMENT AS NOTED
- - - EASEMENT AS NOTED
- - - RIGHT-OF-WAY LINE
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MATCH SHEET 4

MATCH SHEET 6



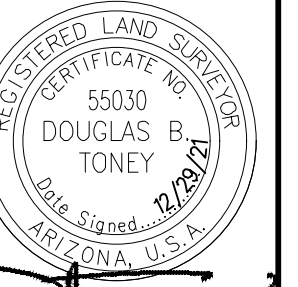
Bowman
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Phone (480) 639-8830
Fax (480) 639-8841
1600 N Desert Drive, #20
Tempe, AZ 85281
www.bowman.com

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MADERA PHASE 3A
QUEEN CREEK, ARIZONA**

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SCALE 1" = 40'	
5 OF 8	

File: C:\Temp\Projects\4256\050227-02-009-Phase 3A-Final Plat.dwg Plotfile: Dec 29, 2021

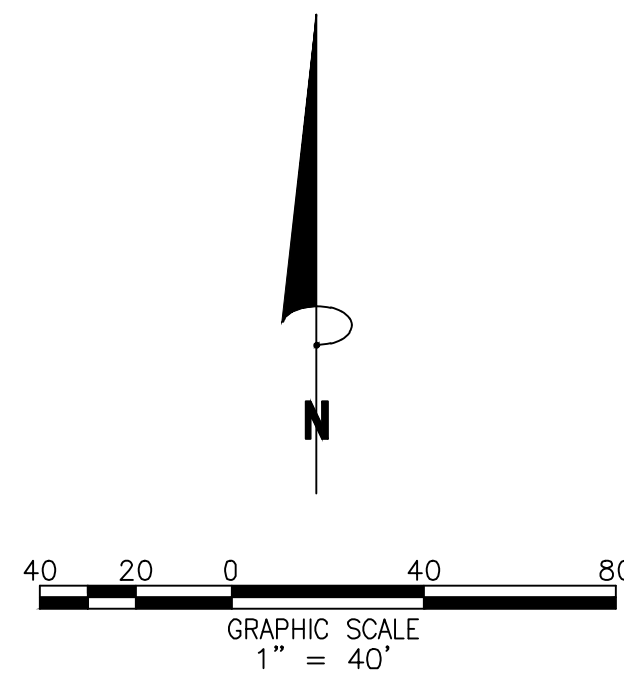
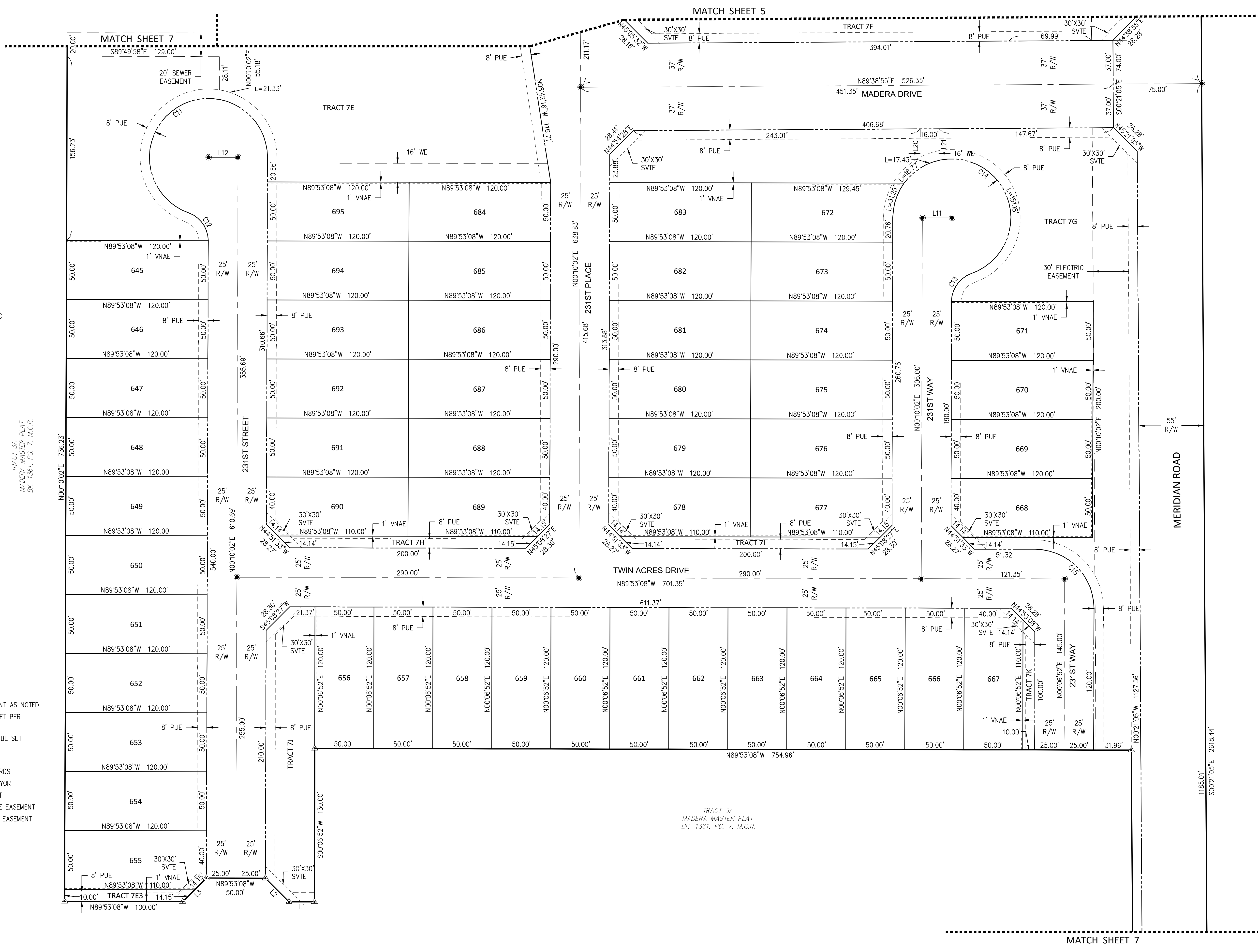
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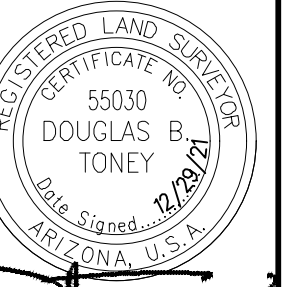
SCALE
1" = 40'
6 OF 8



LEGEND

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- CENTER LINE
- PARCEL LINE
- - - EASEMENT AS NOTED
- - - EASEMENT AS NOTED
- - - RIGHT-OF-WAY LINE
- - - SHEET MATCH LINE

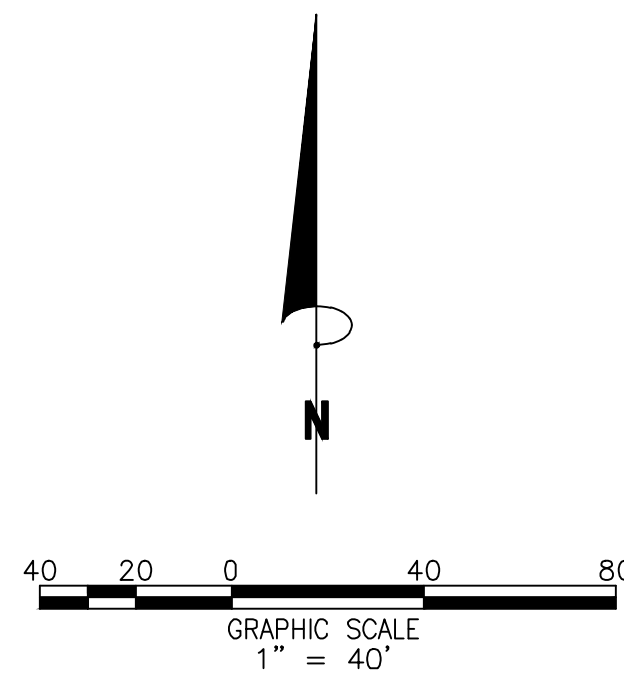
File: C:\Temp\Subdiv\4256\050227-02-009-Phase 3A-Final Plat.dwg Plotfile: Dec 29, 2021



FINAL PLAT
MADERA PHASE 3A
QUEEN CREEK, ARIZONA

DATE: 12/29/21
 PROJ NO: 050227-02
 TASK NUM: 009
 DRAWN BY: TL
 CHECKED: DT
 QUALITY: HT
 CLIENT NO:

SCALE
 1" = 40'
 7 OF 8

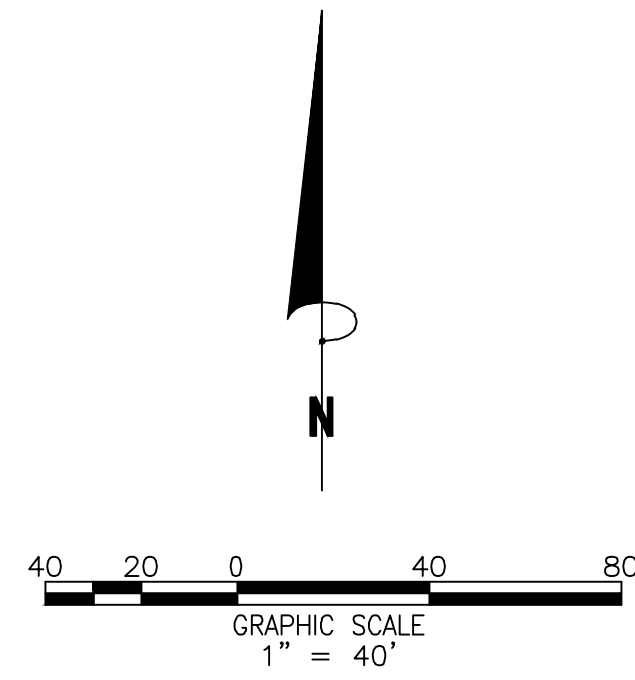


TRACT 2A
 MADERA MASTER PLAT
 BK. 1361, PG. 7, M.C.R.

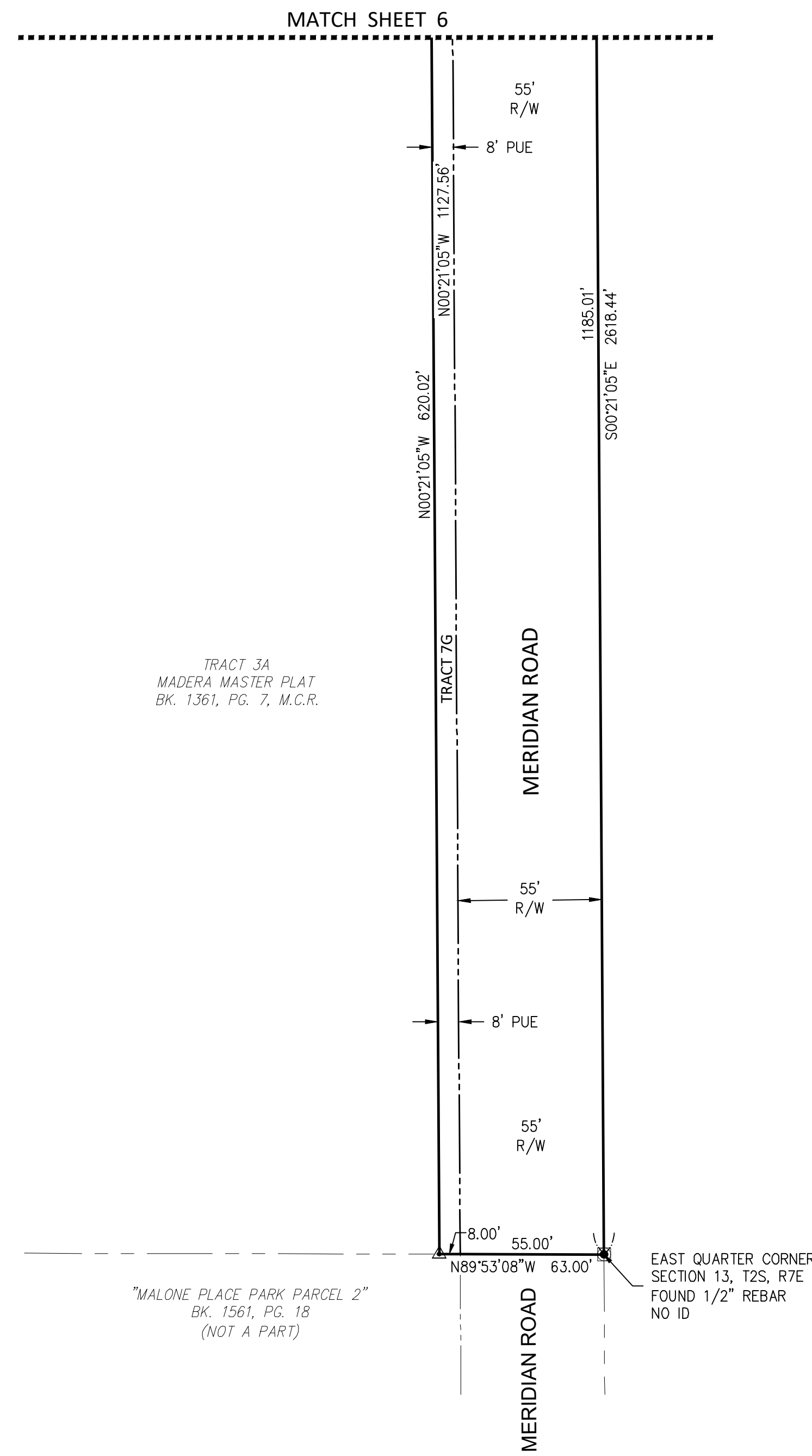
TRACT 3A
 MADERA MASTER PLAT
 BK. 1361, PG. 7, M.C.R.

- LEGEND**
- FOUND SECTION MONUMENT AS NOTED
 - C/L MONUMENT TO BE SET PER MAG STANDARDS
 - ▲ SUBDIVISION CORNER TO BE SET PER MAG STANDARDS
 - R/W RIGHT OF WAY
 - M.C.R. MARICOPA COUNTY RECORDS
 - RLS REGISTERED LAND SURVEYOR
 - PUE PUBLIC UTILITY EASEMENT
 - ESMT SIGHT VISIBILITY TRIANGLE EASEMENT
 - VNAE VEHICULAR NON-ACCESS EASEMENT
 - SE SEWER EASEMENT
 - WE WATER EASEMENT
 - SUBDIVISION BOUNDARY
 - LOT / TRACT LINE
 - SECTION LINE
 - CENTER LINE
 - PARCEL LINE
 - - - EASEMENT AS NOTED
 - - - EASEMENT AS NOTED
 - - - RIGHT-OF-WAY LINE
 - - - SHEET MATCH LINE

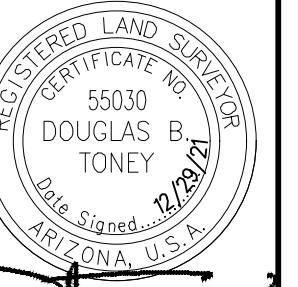
File: C:\Temp\Projects\4256\050227-02-009-Phase 3A-Final Plat.dwg Plotted: Dec 29, 2021



LEGEND	
●	FOUND SECTION MONUMENT AS NOTED
○	C/L MONUMENT TO BE SET PER MAG STANDARDS
▲	SUBDIVISION CORNER TO BE SET PER MAG STANDARDS
R/W	RIGHT OF WAY
M.C.R.	MARICOPA COUNTY RECORDS
RLS	REGISTERED LAND SURVEYOR
PUE	PUBLIC UTILITY EASEMENT
ESMT	SIGHT VISIBILITY TRIANGLE EASEMENT
VNAE	VEHICULAR NON-ACCESS EASEMENT
SE	SEWER EASEMENT
WE	WATER EASEMENT
---	SUBDIVISION BOUNDARY
---	LOT / TRACT LINE
---	SECTION LINE
---	CENTER LINE
---	PARCEL LINE
---	EASEMENT AS NOTED
---	EASEMENT AS NOTED
---	RIGHT-OF-WAY LINE
---	SHEET MATCH LINE



File: C:\Temp\Subdiv\4256\050227-02-009-Phase 3A-Final Plat.dwg Plotfile: Dec 29, 2021



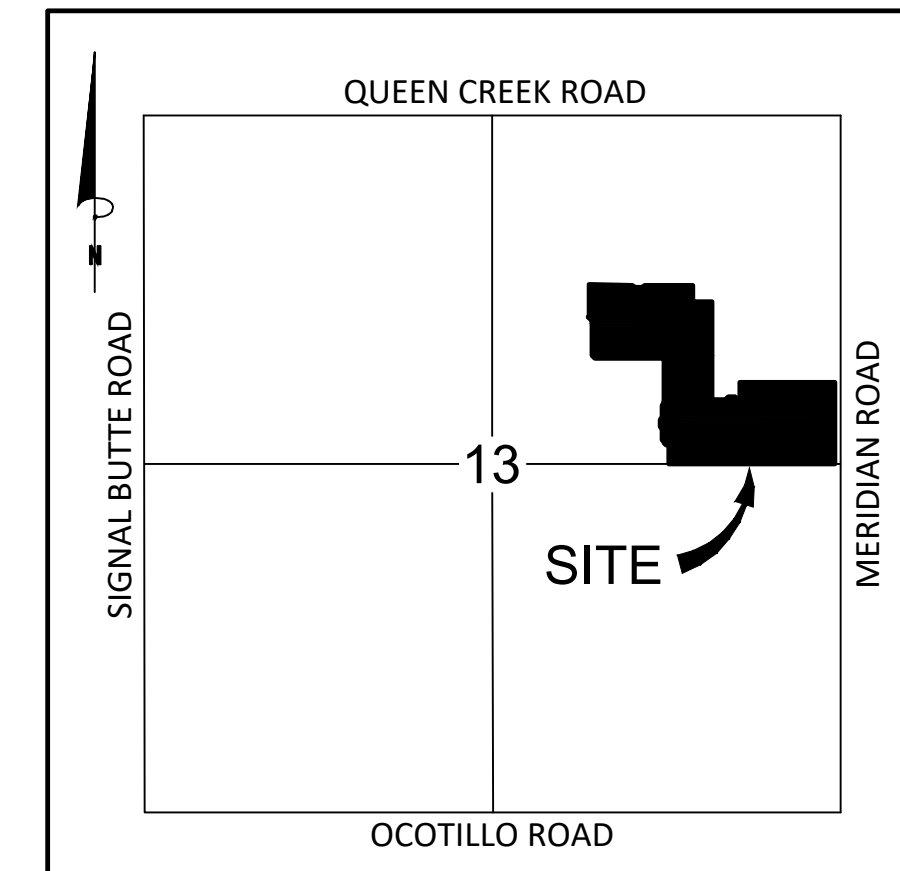
**FINAL PLAT
 MADERA PHASE 3A
 QUEEN CREEK, ARIZONA**

DATE: 12/29/21
 PROJ NO: 050227-02
 TASK NUM: 009
 DRAWN BY: TL
 CHECKED: DT
 QUALITY: HT
 CLIENT NO:

SCALE
 1" = 40'
 8 OF 8

FINAL PLAT OF MADERA PHASE 3B

A REPLAT OF A PORTION OF TRACT "3A", OF "MASTER PLAT OF MADERA",
ACCORDING TO BOOK 1361 OF MAPS, PAGE 7, RECORDS OF MARICOPA COUNTY, ARIZONA,
LOCATED IN THE NORTH HALF OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 EAST,
OF THE GILA AND SALT RIVER BASE AND MERIDIAN,
MARICOPA COUNTY, ARIZONA.



VICINITY MAP
N.T.S.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

THAT QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AS OWNER, HAS SUBDIVIDED UNDER THE NAME "MADERA PHASE 3B", A REPLAT OF PORTIONS OF TRACTS "3A", "3C", AND "7C", OF "MASTER PLAT OF MADERA", ACCORDING TO BOOK 1361 OF MAPS, PAGE 7, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN THE NORTH HALF OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON, AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF SAID "MADERA PHASE 3B", AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATIONS AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS, STREETS AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME GIVEN TO EACH, RESPECTIVELY ON SAID PLAT, AND THAT QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AS OWNER, HEREBY DEDICATES TO THE PUBLIC FOR USE AS SUCH STREETS, AND OTHER EASEMENTS AS SHOWN ON SAID PLAT AND INCLUDED IN THE ABOVE DESCRIBED PREMISES.

OWNER HEREBY DEDICATES AND CONVEYS TO THE TOWN OF QUEEN CREEK ALL REAL PROPERTY DESIGNATED ON THIS PLAT AS "RIGHT-OF-WAY" (R/W) FOR USE AS PUBLIC RIGHT-OF-WAY.

ALL TRACTS THAT WILL NOT BE CONVEYED TO THE TOWN OF QUEEN CREEK AND ALL COMMON PROPERTY SHALL BE IMPROVED IN ACCORDANCE WITH PLANS APPROVED BY THE TOWN OF QUEEN CREEK AND SHALL BE CONVEYED BY WARRANTY (OR SPECIAL WARRANTY) DEED TO THE MADERA COMMUNITY MASTER ASSOCIATION. THE MADERA COMMUNITY MASTER ASSOCIATION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON PROPERTY.

TRACTS "7E4", "9A", "9B", "9C", "9D", "9E", "9F", "9G", AND "9H" ARE NOT DEDICATED TO THE PUBLIC, BUT ARE PLATTED AS COMMON PROPERTY FOR THE USE AND ENJOYMENT OF THE MADERA COMMUNITY MASTER ASSOCIATION AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

THE MAINTENANCE OF LANDSCAPING WITHIN THE PUBLIC RIGHT-OF-WAY TO BACK OF CURB INCLUDING MEDIANS SHALL BE THE RESPONSIBILITY OF THE MADERA COMMUNITY MASTER ASSOCIATION OR ADJUTING PROPERTY OWNER.

ALL PROPERTY, AMENITIES AND FACILITIES PROPOSED TO BE MAINTAINED BY THE MADERA COMMUNITY MASTER ASSOCIATION ARE HEREWITH PLATTED AS COMMON PROPERTY WITH AN UNDIVIDED INTEREST OWNED IN COMMON BY EACH PARCEL OWNER.

EASEMENTS ARE GRANTED FOR THE PURPOSES SHOWN HEREON.

IN WITNESS WHEREOF:

QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, AS OWNER, HAS HEREUNTO CAUSED THEIR NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE OFFICER LISTED BELOW, THEREUNTO DULY AUTHORIZED.

QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP

BY: _____

NAME: _____

ITS: _____

ACKNOWLEDGMENT

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

ON THIS _____ DAY OF _____, 2022, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____, WHO ACKNOWLEDGED SELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

NOTES

- NO STRUCTURES OR VEGETATION OF ANY KIND MAY BE CONSTRUCTED OR ANY VEGETATION PLANTED NOR ALLOWED TO GROW WITHIN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES OR EASEMENTS WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER OR THROUGH THE EASEMENTS THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN. THE TOWN MAY, IF IT SO DESIRES, CONSTRUCT AND/OR MAINTAIN DRAINAGE FACILITIES ON OR UNDER THE LAND OF THE EASEMENT.
- IN EASEMENTS FOR THE EXCLUSIVE USE OF WATER, SANITARY SEWER, OR ANY COMBINATION THEREOF, ONLY GROUND COVER AND BUSHES ARE ALLOWED TO BE PLANTED WITHIN THE EASEMENT AREA. NO TREES ARE ALLOWED.
- ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND WITH THE EXCEPTION OF POWER LINES WHICH ARE 69KV LINES OR MORE.
- 69KV ELECTRICAL LINES MUST BE RELOCATED OUTSIDE OF THE RIGHT-OF-WAY OR TO THE EDGE OF THE RIGHT-OF-WAY.
- ELECTRICAL LINES SHALL BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- CONSTRUCTION WITHIN UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES AND DRIVEWAYS.
- ALL RETENTION BASINS MUST BE MAINTAINED TO DRAIN WITHIN (36) THIRTY-SIX HOURS AFTER ANY STORM EVENT UP TO AND INCLUDING THE 100-YEAR 2 HOUR STORM. THE OWNERS OF ANY SUCH BASINS FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASINS INTO COMPLIANCE.
- THE TOWN OF QUEEN CREEK IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF ANY LANDSCAPED AREAS WITHIN THIS PROJECT. THE MADERA COMMUNITY MASTER ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTENANCE OF ALL LANDSCAPED ISLANDS AND MEDIANS AND THE MAINTENANCE OF LANDSCAPING WITHIN TRACTS "7E4", "9A", "9B", "9C", "9D", "9E", "9F", "9G", AND "9H" SHALL BE THE RESPONSIBILITY OF THE MADERA COMMUNITY MASTER ASSOCIATION.
- THIS SITE, DUE TO ITS PROXIMITY TO PHOENIX MESA GATEWAY AIRPORT, IS LIKELY TO EXPERIENCE AIRCRAFT OVERFLIGHTS, WHICH COULD GENERATE NOISE LEVELS WHICH MAY BE OF CONCERN TO SOME INDIVIDUALS. THE MIX OF AIRCRAFT TRAFFIC CONSISTS OF CARGO, COMMERCIAL, SCHOOL, CROP DUSTING, CHARTER, CORPORATE, GENERAL AVIATION AND MILITARY AIRCRAFT.
- THIS SITE IS NEAR CROP DUSTING OPERATIONS. GENERAL AGRICULTURE OPERATIONS ALSO EXIST IN THE AREA AND THIS SITE MAY BE SUBJECT TO NOISE, DUST AND POSSIBLY ODORS NORMALLY ASSOCIATED WITH AGRICULTURAL OPERATIONS. ADDITIONALLY, THIS SITE IS LOCATED IN AN AREA WHERE THERE ARE AIRCRAFT OPERATIONS ASSOCIATED WITH AGRICULTURE.
- THIS SITE IS IN CLOSE PROXIMITY TO FUTURE COMMERCIAL DEVELOPMENT, AND MAY EXPERIENCE NOISE FROM DELIVERIES, TRAFFIC, LIGHTS AND PARKING ISSUES RELATED TO THE OPERATION OF THESE COMMERCIAL PROPERTIES.
- LOT, TRACT, PARCEL AND, CENTERLINE MONUMENTATION ARE OR WILL BE PERMANENTLY SET BY COMPLETION OF CONSTRUCTION, BY THE RESPONSIBLE SURVEYOR HIRED BY QC320 RESIDENTIAL LAND IV LP, A DELAWARE LIMITED LIABILITY PARTNERSHIP, OR THEIR ASSIGNEE.
- THIS SUBDIVISION IS WITHIN AN AIRPORT IMPACT OVERLAY DISTRICT.

ASSURED WATER SUPPLY

THE ARIZONA DEPARTMENT OF WATER RESOURCES HAS GRANTED A CERTIFICATE OF ASSURED WATER SUPPLY, DWR FILE NO. _____

ASSURANCE STATEMENT

ASSURANCE IN THE FORM OF A CASH, PERFORMANCE OR SUBDIVISION BOND OR IRREVOCABLE LETTER OF CREDIT IN AN AMOUNT OF \$ _____ HAS BEEN DEPOSITED WITH THE TOWN ENGINEERING MANAGER TO GUARANTEE CONSTRUCTION OF THE REQUIRED SUBDIVISION IMPROVEMENTS.

HOMEOWNERS RATIFICATION

BY THIS RATIFICATION _____, DULY ELECTED PRESIDENT OF THE MADERA COMMUNITY MASTER ASSOCIATION ACKNOWLEDGES THE RESPONSIBILITIES DEDICATED HEREIN.

SIGNATURE DATE

DEED RESTRICTIONS

COVENANTS, CONDITIONS AND RESTRICTIONS FOR MADERA, QUEEN CREEK, ARIZONA ARE RECORDED IN DOCUMENT NO.2020-018100, MARICOPA COUNTY RECORDS, ARIZONA.

SHEET INDEX

- | | |
|-----|---|
| 1 | COVER, NOTES, DEDICATION, SITE DATA, BASIS OF BEARINGS, CERTIFICATIONS |
| 2 | KEY MAP, TYPICAL LOT DETAILS, SIGHT VISIBILITY EASEMENT DETAIL
LOT TABLE, TRACT TABLE, LINE & CURVE TABLES |
| 3-5 | FINAL PLAT PLAN SHEETS |

OWNER

QC320 RESIDENTIAL LAND IV LP
7001 N SCOTTSDALE RD, SUITE 1015
SCOTTSDALE, AZ 85253
PHONE: (480) 315-2600
CONTACT: MICHELLE YERGER

ENGINEER

BOWMAN
1600 N DESERT DRIVE, #210
TEMPE, AZ 85281
PHONE: (480) 629-8830
CONTACT: JOHN GRAY

SITE DATA

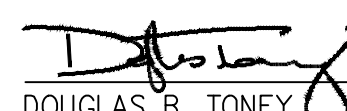
ZONING	R1-7 WITH PAD OVERLAY
NUMBER OF LOTS	87
GROSS AREA	1,308,095 SQ.FT. OR 30.0297 ACRES, MORE OR LESS
NET AREA	1,053,091 SQ.FT. OR 24.1756 ACRES, MORE OR LESS

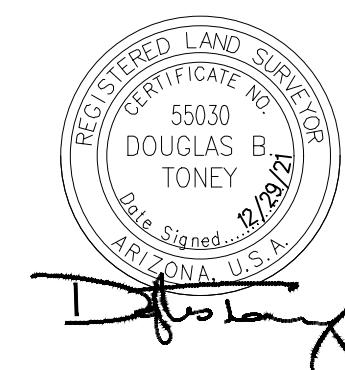
BASIS OF BEARINGS

NORTH 89 DEGREES 49 MINUTES 50 SECONDS WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, ACCORDING TO BOOK 1361 OF MAPS, PAGE 7, M.C.R.

SURVEYOR'S CERTIFICATION

THIS IS TO CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE AND THE MONUMENTS DESCRIBED HEREIN HAVE EITHER BEEN SET OR LOCATED AS DESCRIBED TO THE BEST OF MY KNOWLEDGE AND BELIEF.

 _____ 12/29/21
DOUGLAS B. TONEY DATE
REGISTERED LAND SURVEYOR NO. 55030
BOWMAN
1600 N DESERT DRIVE, #210
TEMPE, AZ 85281



DEPARTMENT APPROVALS

BY: _____ DATE _____
TOWN ENGINEER

BY: _____ DATE _____
TOWN PLANNING ADMINISTRATOR

TOWN APPROVAL

APPROVED BY THE TOWN COUNCIL OF QUEEN CREEK, ARIZONA, THIS _____ DAY OF _____ 2022.

BY: _____ ATTEST: _____
MAYOR TOWN CLERK

FINAL PLAT
MADERA PHASE 3B
QUEEN CREEK, ARIZONA

Bowman
Bowman Consulting Group, Ltd.
1600 N Desert Drive, #210
Tempe, AZ 85281
Phone (480) 629-8830
Fax (480) 629-8841
www.bowman.com

© Bowman Consulting Group, Ltd.

DATE: 12/29/21
PROJ NO: 050227-02
TASK NUM: 009
DRAWN BY: TL
CHECKED: DT
QUALITY: HT
CLIENT NO:
SCALE N.T.S.
1 of 5

LOT	SQ. FT.	ACRES
803	10,322	0.2369
804	9,750	0.2238
805	9,750	0.2238
806	9,708	0.2229
807	9,708	0.2229
808	9,750	0.2238
809	9,750	0.2238
810	9,750	0.2238
811	9,750	0.2238
812	9,700	0.2227
813	9,750	0.2238
814	9,750	0.2238
815	9,750	0.2238
816	9,750	0.2238
817	9,750	0.2238
818	9,750	0.2238
819	9,750	0.2238
820	9,750	0.2238
821	9,750	0.2238
822	9,750	0.2238
823	9,750	0.2238
824	9,750	0.2238

LOT	SQ. FT.	ACRES
825	9,750	0.2238
826	9,750	0.2238
827	9,750	0.2238
828	9,750	0.2238
829	9,700	0.2227
830	9,700	0.2227
831	9,750	0.2238
832	9,750	0.2238
833	9,937	0.2281
834	9,750	0.2238
835	9,700	0.2227
836	9,750	0.2238
837	9,750	0.2238
838	9,750	0.2238
839	9,750	0.2238
840	9,750	0.2238
841	9,750	0.2238
842	9,750	0.2238
843	9,700	0.2227
844	9,700	0.2227
845	9,750	0.2238
846	9,750	0.2238

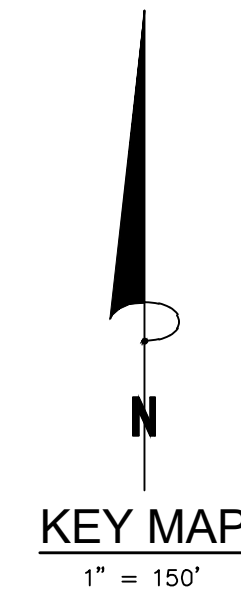
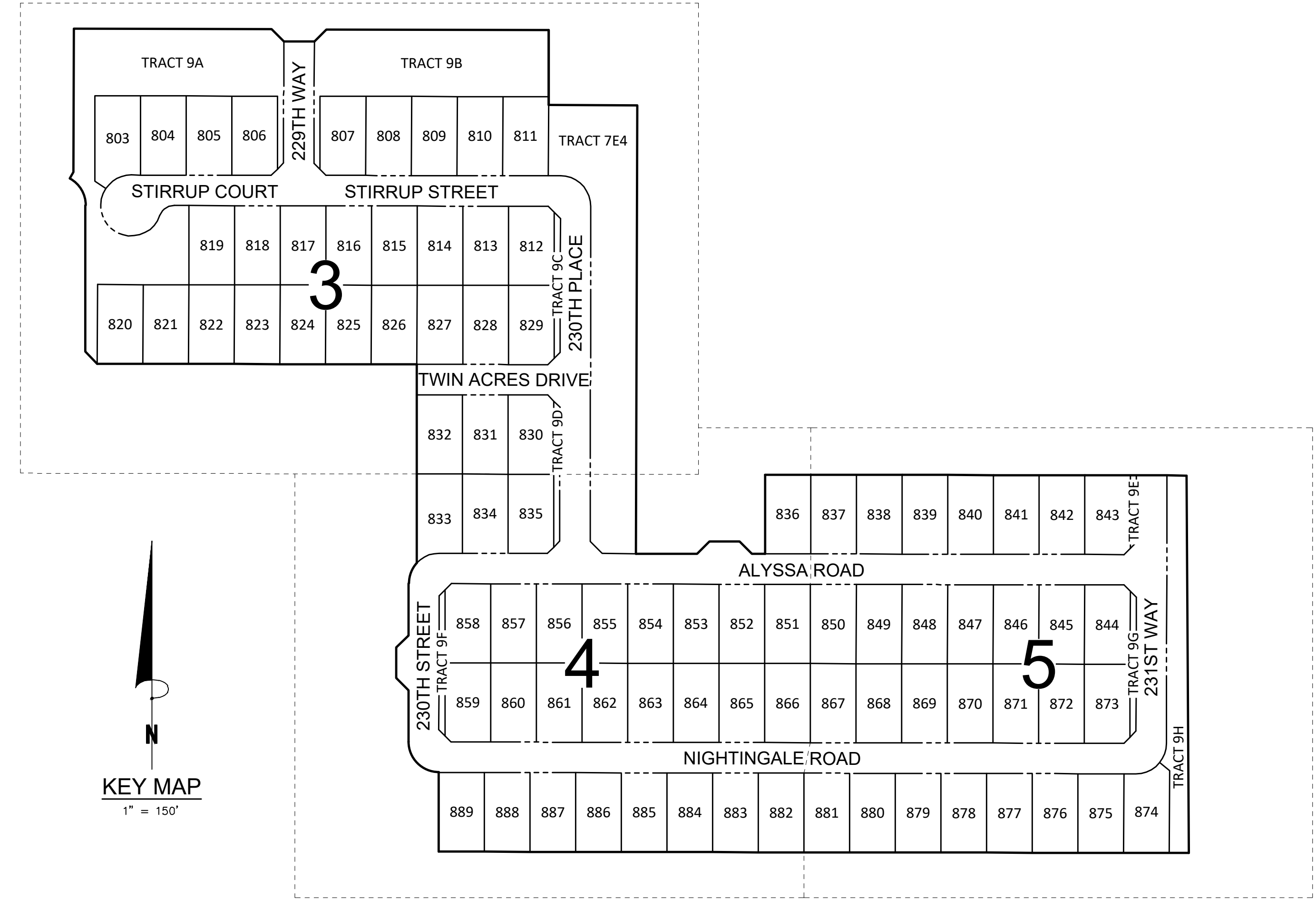
LOT	SQ. FT.	ACRES
847	9,750	0.2238
848	9,750	0.2238
849	9,750	0.2238
850	9,750	0.2238
851	9,750	0.2238
852	9,750	0.2238
853	9,750	0.2238
854	9,750	0.2238
855	9,750	0.2238
856	9,750	0.2238
857	9,750	0.2238
858	9,700	0.2227
859	9,700	0.2227
860	9,750	0.2238
861	9,750	0.2238
862	9,750	0.2238
863	9,750	0.2238
864	9,750	0.2238
865	9,750	0.2238
866	9,750	0.2238
867	9,750	0.2238
868	9,750	0.2238

LOT	SQ. FT.	ACRES
869	9,750	0.2238
870	9,750	0.2238
871	9,750	0.2238
872	9,750	0.2238
873	9,700	0.2227
874	10,156	0.2332
875	9,750	0.2238
876	9,750	0.2238
877	9,750	0.2238
878	9,750	0.2238
879	9,750	0.2238
880	9,750	0.2238
881	9,750	0.2238
882	9,750	0.2238
883	9,750	0.2238
884	9,750	0.2238
885	9,750	0.2238
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887	9,750	0.2238
888	9,750	0.2238
889	9,750	0.2238

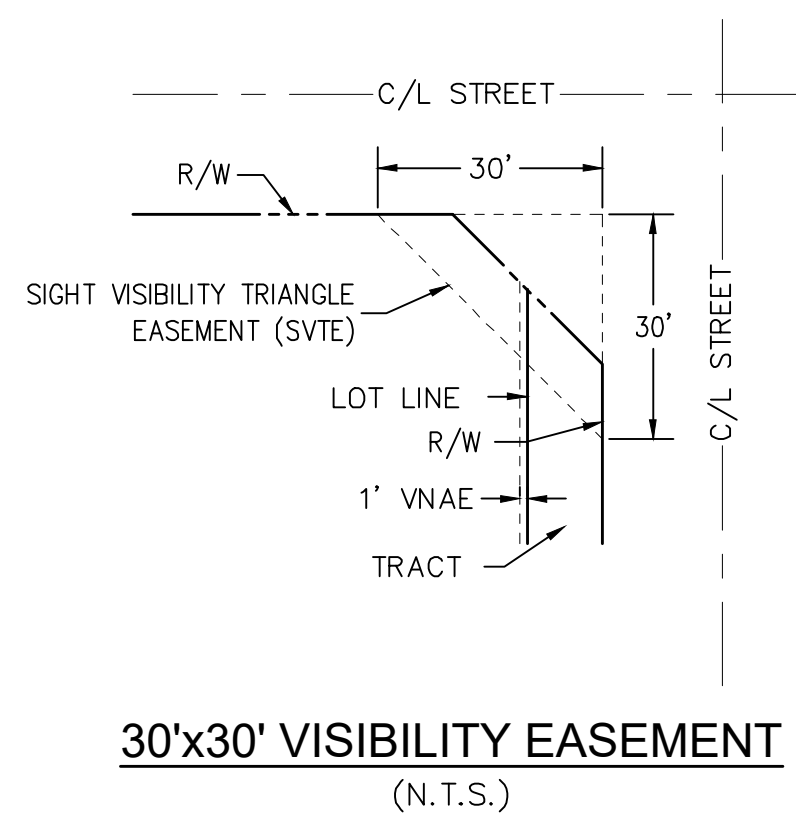
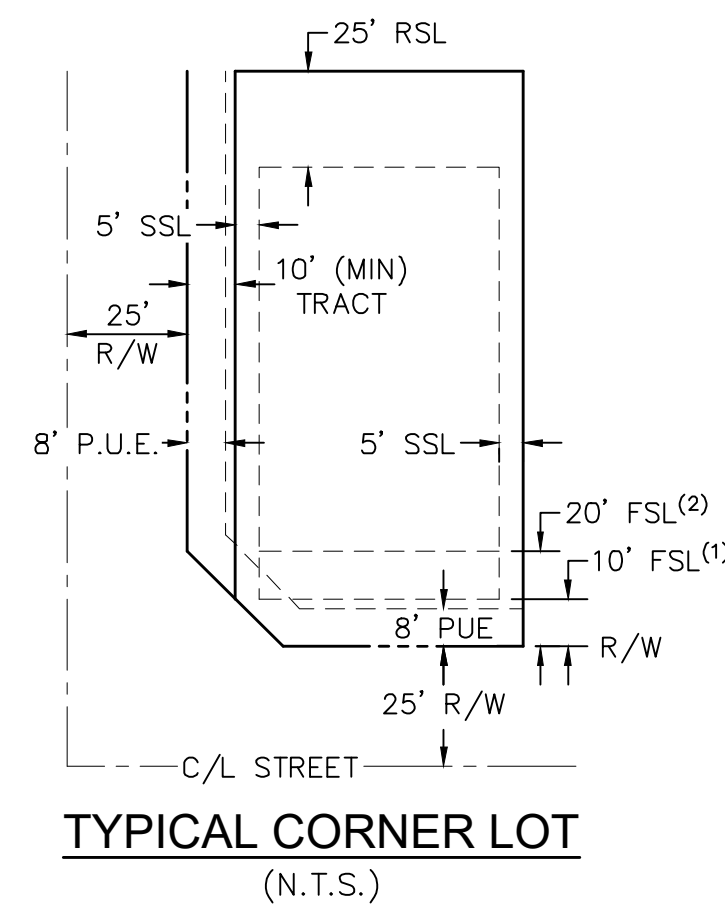
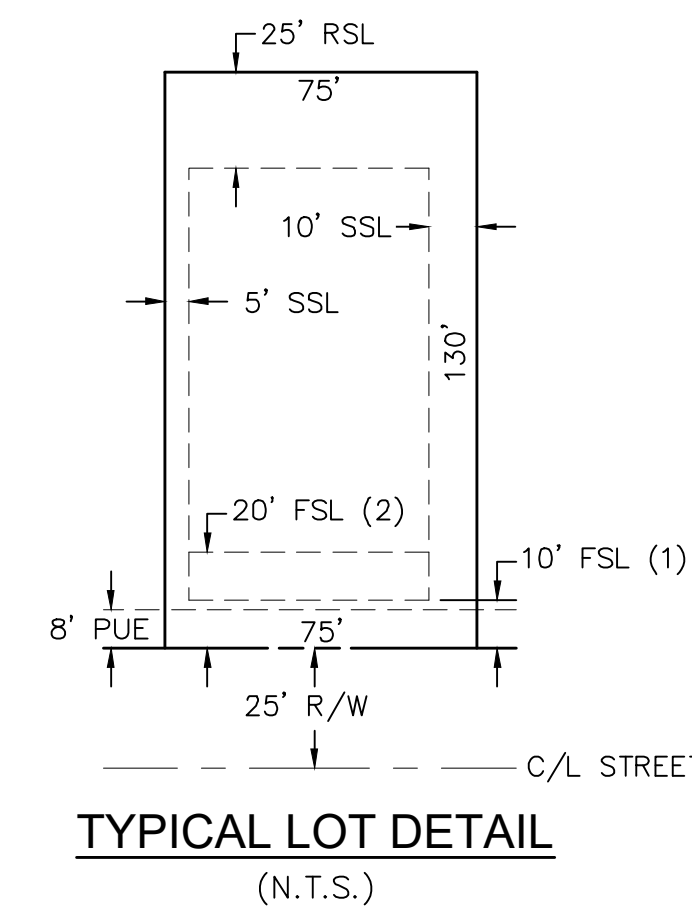
TRACT	SQ. FT.	ACRES	DESCRIPTION
TRACT 7E4	64,269	1.4754	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 9A	65,615	1.5063	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE, SEWER EASEMENT
TRACT 9B	43,118	0.9899	DRAINAGE, LANDSCAPE, OPEN SPACE, PUE
TRACT 9C	2,300	0.0528	LANDSCAPE, OPEN SPACE, PUE
TRACT 9D	2,300	0.0528	LANDSCAPE, OPEN SPACE, PUE
TRACT 9E	1,150	0.0264	LANDSCAPE, OPEN SPACE, PUE
TRACT 9F	2,300	0.0528	LANDSCAPE, OPEN SPACE, PUE
TRACT 9G	2,300	0.0528	LANDSCAPE, OPEN SPACE, PUE
TRACT 9H	20,858	0.4788	LANDSCAPE, OPEN SPACE, PUE, ELECTRIC EASEMENT

LINE #	LENGTH	DIRECTION
L1	28.28'	N44°53'08"W
L2	28.28'	N45°06'52"E
L3	28.28'	N44°53'08"W
L4	12.73'	N28°51'28"E
L5	28.28'	S44°49'58"E
L6	50.00'	S89°49'58"E
L7	28.28'	N45°10'02"E
L8	28.30'	S45°08'27"W
L9	50.00'	N89°53'08"W
L10	28.27'	N44°51'33"W
L11	21.60'	N89°53'08"W
L12	25.00'	N00°06'52"E
L13	45.00'	S00°10'02"W
L14	45.00'	S89°53'08"E
L15	40.82'	S89°53'08"E
L16	26.68'	S89°53'08"E
L17	22.11'	S56°11'44"E
L18	21.06'	N50°35'46"W

CURVE #	LENGTH	RADIUS	DELTA
C1	78.54'	50.00'	090°00'00"
C2	36.80'	50.00'	042°09'56"
C3	53.46'	50.00'	061°15'23"
C4	218.63'	50.00'	250°31'44"
C5	30.77'	25.00'	070°31'44"
C6	78.54'	50.00'	090°00'00"
C7	78.54'	50.00'	090°00'00"
C8	78.54'	50.00'	090°00'00"



- LEGEND**
- FOUND SECTION MONUMENT AS NOTED
 - C/L MONUMENT TO BE SET PER MAG STANDARDS
 - ▲ SUBDIVISION CORNER TO BE SET PER MAG STANDARDS
 - R/W RIGHT OF WAY
 - M.C.R. MARICOPA COUNTY RECORDS
 - RLS REGISTERED LAND SURVEYOR
 - PUE PUBLIC UTILITY EASEMENT
 - ESMT SIGHT VISIBILITY TRIANGLE EASEMENT
 - VNAE VEHICULAR NON-ACCESS EASEMENT
 - SE SEWER EASEMENT
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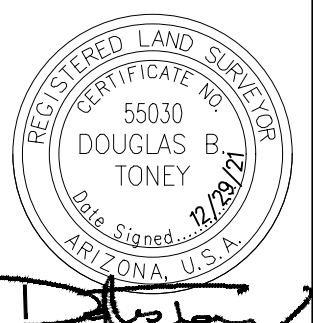


- NOTES**
- (1) 10' FRONT SETBACK TO FRONT OF SIDE ENTRY GARAGE, LIVING SPACE & COVERED PORCH
 - (2) 20' FRONT SETBACK TO FACE OF GARAGE
- SEE PAD FOR OTHER SETBACK NOTES
- SSL SIDE SETBACK LINE
 - RSL REAR SETBACK LINE
 - FSL FRONT SETBACK LINE
 - PUE PUBLIC UTILITY EASEMENT
 - R/W RIGHT OF WAY

VISIBILITY EASEMENT RESTRICTIONS

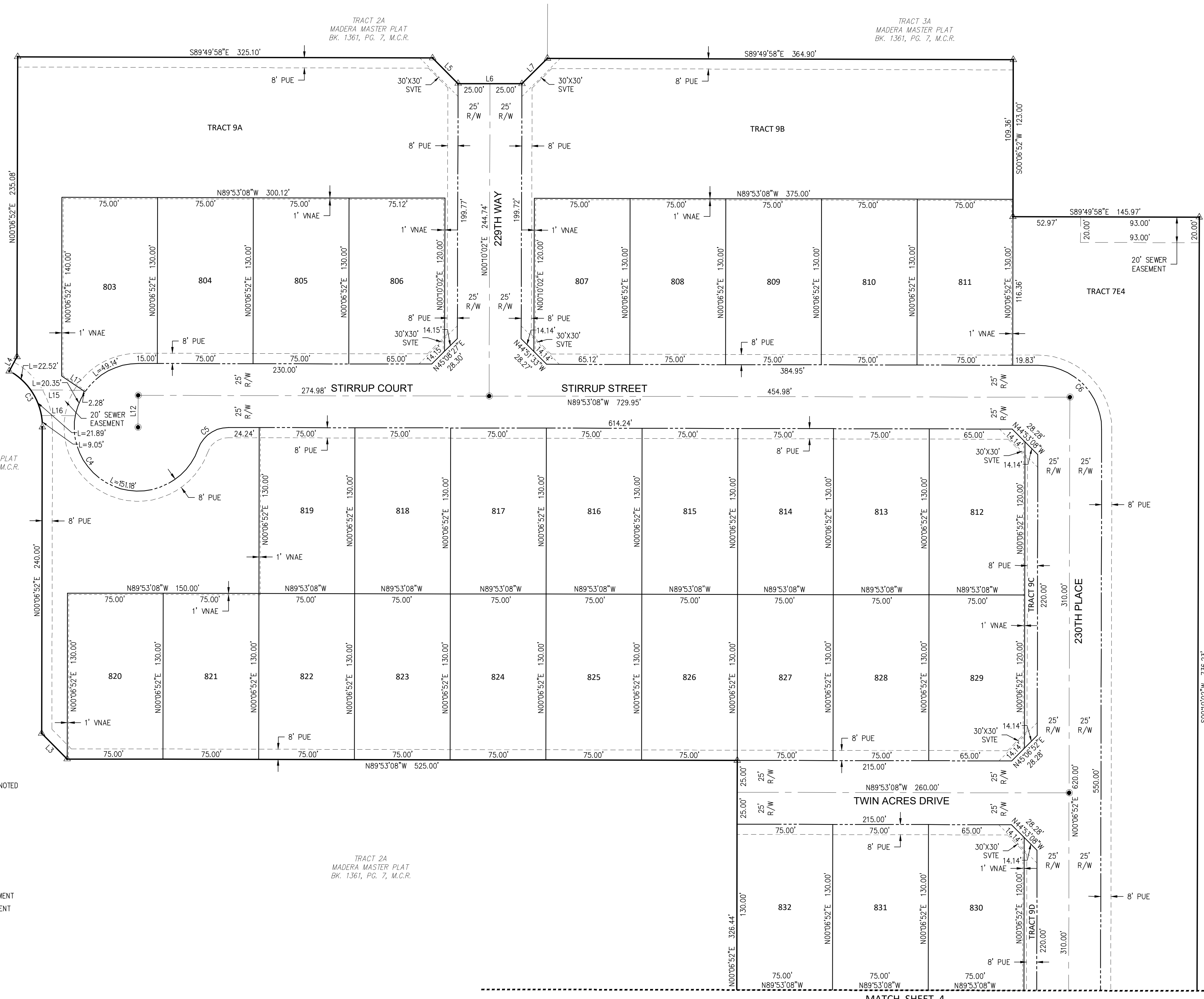
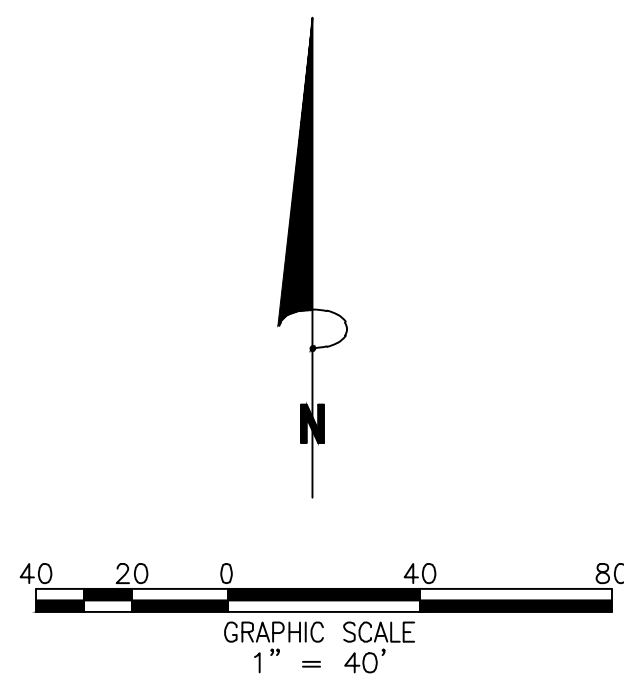
ANY OBJECT, WALL, STRUCTURE, MOUND OR LANDSCAPING (MATURE) OVER 24" IN HEIGHT IS NOT ALLOWED WITHIN THE VISIBILITY EASEMENT EXCEPT TREES TRIMMED TO NOT LESS THAN 6' ABOVE THE GROUND. TREES SHALL BE SPACED NOT LESS THAN 8' APART.

**FINAL PLAT
MADERA PHASE 3B
QUEEN CREEK, ARIZONA**

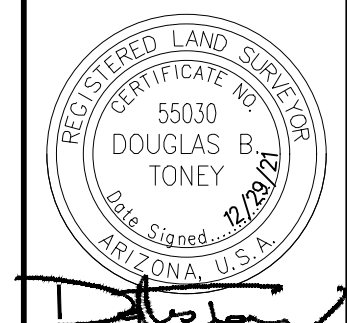


Bowman
Bowman Consulting Group, Ltd.
1600 N. Desert Drive, #20
Tempe, AZ 85281
Phone (480) 659-8830
Fax (480) 659-8841
www.bowman.com

DATE: 12/29/21
PROJ NO: 050227-02
TASK NUM: 009
DRAWN BY: TL
CHECKED: DT
QUALITY: HT
CLIENT NO:
SCALE
N.T.S.
2 OF 5



- LEGEND**
- FOUND SECTION MONUMENT AS NOTED
 - C/L MONUMENT TO BE SET PER MAG STANDARDS
 - ▲ SUBDIVISION CORNER TO BE SET PER MAG STANDARDS
 - R/W RIGHT OF WAY
 - M.C.R. MARICOPA COUNTY RECORDS
 - RLS REGISTERED LAND SURVEYOR
 - PUE PUBLIC UTILITY EASEMENT
 - ESMT SIGHT VISIBILITY TRIANGLE EASEMENT
 - VNAE VEHICULAR NON-ACCESS EASEMENT
 - SE SEWER EASEMENT
 - WE WATER EASEMENT
 - SUBDIVISION BOUNDARY
 - LOT / TRACT LINE
 - SECTION LINE
 - CENTER LINE
 - PARCEL LINE
 - - - EASEMENT AS NOTED
 - - - EASEMENT AS NOTED
 - - - RIGHT-OF-WAY LINE
 - - - SHEET MATCH LINE

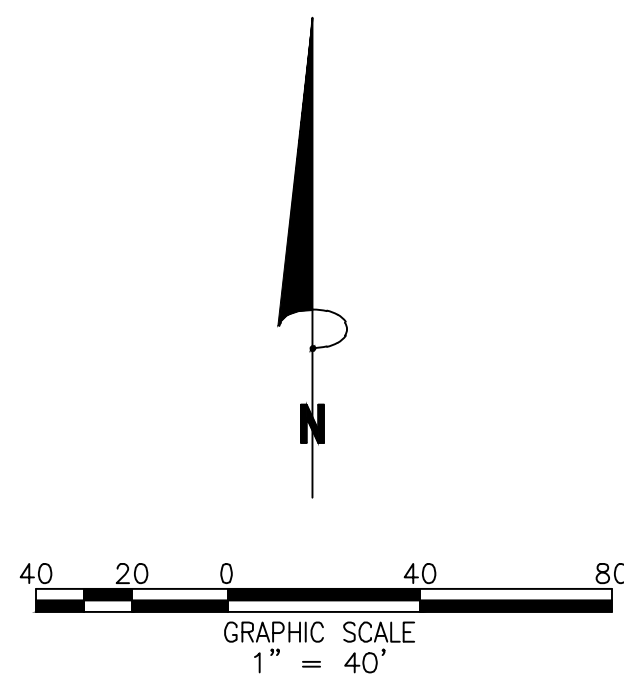


**FINAL PLAT
MADERA PHASE 3B
QUEEN CREEK, ARIZONA**

DATE:	12/29/21
PROJ. NO.:	050227-02
TASK NUM.:	009
DRAWN BY:	TL
CHECKED:	DT
QUALITY:	HT
CLIENT NO.:	
SCALE:	1" = 40'
	3 OF 5

Bowman
Bowman Consulting Group, Ltd.
1600 N Desert Drive, #20
Tempe, AZ 85281
Phone (480) 639-8830
Fax (480) 639-8841
www.bowman.com

File: V:\050227 - Madera Multi-Family\050227-02-009 (308)\Survey\DWG\Plat\050227-02-109-Phase 3B-Final Plat.dwg Plotfile: Dec 29, 2021

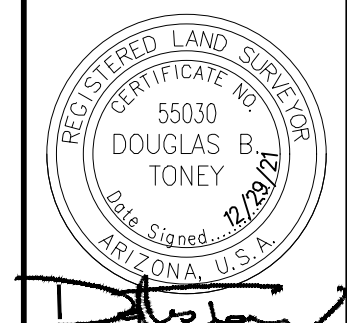


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 - - - EASEMENT AS NOTED
 - - - RIGHT-OF-WAY LINE
 - - - SHEET MATCH LINE

CENTER QUARTER CORNER
SECTION 13, T2S, R7E
FOUND ALUMINUM CAP FLUSH
STAMPED "WOOD PATEL"

"MALONE PLACE PARK PARCEL 3"
BK. 1497, PG. 48
(NOT A PART)

N89°53'08"W 2624.41'
(BASIS OF BEARINGS)

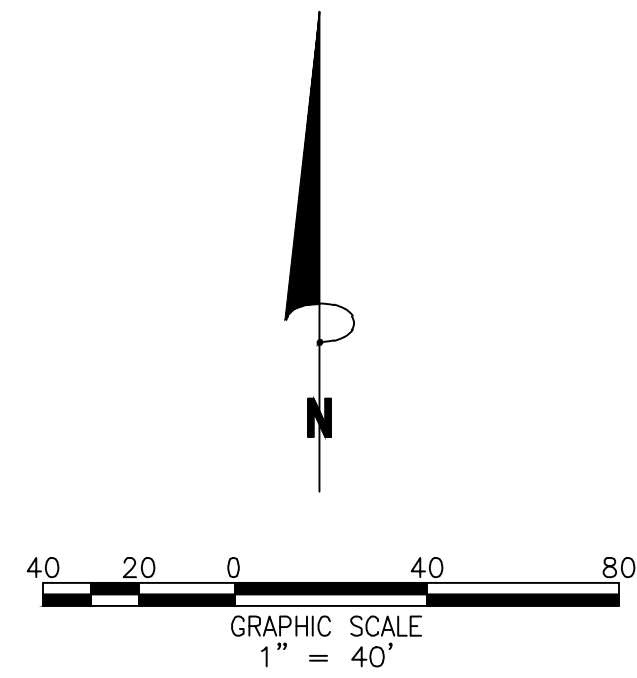


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**FINAL PLAT
MADERA PHASE 3B
QUEEN CREEK, ARIZONA**

DATE:	12/29/21
PROJ NO:	050227-02
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DRAWN BY:	TL
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CLIENT NO:	
SCALE:	1" = 40'
	4 OF 5

File: V:\050227 - Madera Multi-Family\050227-02-008 (389)\Survey\DWG\Plat\050227-02-109-Phase 3B-Final Plat.dwg Plotfile: Dec 29, 2021



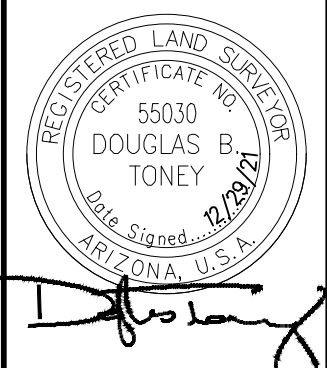
NORTHEAST CORNER
SECTION 13, T2S, R7E
NOTHING FOUND
CALCULATED POSITION

MERIDIAN ROAD
(PINAL COUNTY)

EAST QUARTER CORNER
SECTION 13, T2S, R7E
FOUND 1/2" REBAR
NO ID

LEGEND

- FOUND SECTION MONUMENT AS NOTED
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**FINAL PLAT
MADERA PHASE 3B
QUEEN CREEK, ARIZONA**

DATE:	12/29/21
PROJ NO:	050227-02
TASK NUM:	009
DRAWN BY:	TL
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SCALE
1" = 40'
5 OF 5



TOWN OF
QUEEN CREEK
ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: DOREEN COTT, ECONOMIC DEVELOPMENT DIRECTOR, DAVID SOLUM, GENERAL MANAGER, HORSESHOE PARK & EQUESTRIAN CENTRE

RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE EMERGENCY PROCUREMENT FOR REPAIR WORK TO THE SOUND SYSTEM AT HORSESHOE PARK & EQUESTRIAN CENTRE BY CCS PRESENTATION SYSTEMS IN AN AMOUNT NOT TO EXCEED \$74,773.

DATE: April 20, 2022

Suggested Action:

To approve the Emergency Procurement for repair work to the sound system at Horseshoe Park & Equestrian Centre (HPEC) by CCS Presentation Systems in an amount not to exceed \$74,773.

Discussion:

Although staff have conducted annual maintenance on the sound system at Horseshoe Park & Equestrian Centre, unfortunately the system has reached a critical failure point. Sound is “bleeding over” between arenas making it so that announcements cannot be heard clearly and information from other events is being broadcast to the wrong arena.

Announcements in the arena control the flow and direction of participants. When sound “bleeds over” between arenas it causes confusion and incorrect direction being given, which has the potential to cause injury to participants and spectators.

CCS Presentation Systems has been selected to provide the necessary emergency repairs in accordance with the Town’s Purchasing Policy & Procedures, Section 3-109, Emergency Procurement.

Fiscal Impact:

The total not to exceed amount for CCS proposal number PR07725 totals \$74,773, which includes the proposal amount of \$69,976, plus \$6,798 (10%) for any additional work that may be required. Budget for this replacement will require a FY22 budget adjustment from Contingency totaling \$74,773 in order to award this contract.

Project Component	Proposal Amount	Contingency (10%)	Project Total Not to Exceed	Contingency Needed
HPEC Sound System	\$69,976	\$6,798	\$74,773	\$74,773

Alternatives:

The Town Council could choose not to approve the major repairs to the sound system and HPEC will have to cancel any events that use more than one arena at a time, as well as other events that would be in conflict with an event in Arena one.

Attachment(s):

1. [Emergency Procurement Authorization](#)
2. [CCS Presentation Systems Proposal](#)



TOWN OF
QUEEN CREEK
ARIZONA

EMERGENCY JUSTIFICATION FORM

(To be completed for purchases that are purchased in an Emergency)

Request for: EMERGENCY PURCHASE

In accordance with the Town's Purchasing Policy and Procedures, Section 3-109, Emergency Procurement is as outlined below:

Notwithstanding any other provisions of this policy, the purchasing agent may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition, as is practicable under circumstances.

A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, purchase order and the amount. In the event that the cost of the emergency is greater than \$25,000, the purchase shall be taken to Council after the fact.

1. Justification for Emergency:

Although we have been conducting annual maintenance on the sound system at Horseshoe Park & Equestrian Centre, unfortunately the system has reached a critical failure point. Sound is "bleeding over" between arenas making it so that announcements cannot be heard clearly and information from other events is being broadcast to the wrong arena.

Announcements in the arena control the flow and direction of participants. When sound "bleeds over" between arenas it causes incorrect direction being given, which can cause injury to participants and spectators.

2. Full Description of Service or Materials:

CCS Presentation Systems will replace and repair the sound system at HPEC. This will include: Audio System, Control System, Cabling and Connectors and Electrical.

3. Requisition Number: _____ TBD _____

4. What steps, if any, were taken to verify that this cost is fair and reasonable?

CCS Presentations originally installed the system and has completed all the maintenance and have the correct programming to go with current system. Starting a new vendor would be significantly more expensive as we would need to start over with the entire system.



TOWN OF
QUEEN CREEK
ARIZONA

Department: Horseshoe Park & Equestrian Centre

Contact: David Solum, General Manager

Phone #: 480-358-3794

Requested Vendor: CCS Presentation Systems

Cost Estimate: \$69,976, plus \$6,798 (10%) for contingency
Total of \$74,773

Vendor's Address: 17350 North Hartford Drive,
Scottsdale, AZ 85255

Vendor Contact: Tony Piowarsky

Phone #: 480-348-0100

STATEMENT OF NEED:

My division's Emergency Purchase is based upon an Emergency in accordance with the Town's Purchasing Policy and Procedures, I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favor, or compromising action have taken place.

David Solum

Signature of Requestor

4/8/2022

Date

Please complete entire form and forward to Purchasing.

APPROVALS: (Note: Town Council ratification will be scheduled at the next available Council meeting for purchase \$25,000 & over.)

To Be Completed by Procurement Officer:

Approval:

Approved per Town Purchasing Policy & Procedures, Section 3-109

Request Denied:

Request Returned for Additional Information:

Comments:

Approved by:

Signature: Melissa Bauer

Date: 4/8/2022



Proposal Date:
March 4, 2022
Quote Number:
PR07725

Horseshoe Park PA System

Project Location:
20464 E. Riggs Rd.
Queen Creek AZ 85142

Prepared For:
TOWN OF QUEEN CREEK
ACCOUNTS PAYABLE DEPARTMENT, 22358 S.
ELLSWORTH ROAD
Queen Creek AZ 85142

CCS Presentation Systems
17350 North Hartford Drive
Scottsdale, AZ. 85255

Proposed by:
Tony Piowarsy
tpiowarsy@ccsprojects.com
(480) 348-0100

PA SYSTEM

SCOPE

CUSTOMER: TOWN OF QUEEN CREEK

PROJECT NAME: HORSESHOE PARK

CCS PROJECT NUMBER: PR07725

DATED: 3.3.22

PROJECT OVERVIEW:

- Replace most of the head end equipment mounted at the racks in the IT room.
- The system shall be controlled via a 10-inch touch panel mounted near the equipment racks.

NOTE: Prior to the system installation starting, CCS shall test the system from top to bottom to determine its condition prior to work starting.

Upon completion of this inspection, a detailed report shall be generated, and a copy given to the customer.

EXISTING EQUIPMENT TO BE REUSED:

- Arena mic jack plates and all related cabling.
- Arena Loudspeakers and all related cabling.
- Audio amplifiers (X4).
- Audio equipment racks (X2).
- Electrical power to the equipment racks.

NOTE: CCS shall make no claims regarding the operational condition of any of the equipment that is being reused.

The one-year warranty period for this project shall only include the new equipment that is being installed.

Any repairs needed to existing equipment will incur additional costs through the CCS service department.

AUDIO SYSTEM:

- All audio processors shall be replaced.
- This system has the capability to be monitored remotely (Via an OFE laptop and internet connection)
- Connect the speakers outside on the east side. of the Arena #2.

NOTE: It is assumed that in Arena #2 there was a conduit paths provided by the previous contractor to the light pole that the loudspeakers are mounted.

CONTROL SYSTEM:

- All A/V system control shall be through a 10-inch custom programmed touch panel.
- It shall reside near the equipment racks.

It shall control:

- o Arena audio input plates.
- o Audio source selection and routing.
- o Input volume selection and muting.
- o Remote monitoring of individual microphones and speakers zones via a powered studio monitor located on top of the equipment racks.
- o Turning the audio systems 7 amplifier on and off as needed when there are no shows going on

EQUIPMENT RACK:

- Reuse the existing audio equipment racks (X2)
- All of the main processing and control components shall receive their power from an uninterruptable power supply located in the #2 equipment rack.
- All equipment within the rack shall be protected from electrical power anomalies with the use of a commercial grade rack mounted power conditioner.

CABLING AND CONNECTORS:

- All new A/V cabling for this project will be plenum rated.

PERSONEL LIFT:

- CCS shall supply a personnel lift for TBD work being performed in Arena #2.

ELECTRICAL:

- Reuse the exiting electrical power at the equipment racks.

After completion of system programing and commissioning the CCS Field Engineer assigned to this project shall provide up to 2 hours of operational training.

CUSTOMER RESPONSIBILITIES:

- Have the equipment room empty and the audio system completely unused while the project is being installed.
- Provide network drops as needed for remote system monitoring.
- Provide an OFE PC or laptop to aid in remote audio system monitoring.
This device must be dedicated to remote system monitoring only.
- Be available for operational training upon the CCS Field Engineer completing the system commissioning.

AUDIO SYSTEM













IMAGE	QTY	DESCRIPTION	PRICE	TOTAL
	1	QSC CORE 110f /License Bundle QSYS Core 110f with software licenses.	\$3,025.80	\$3,025.80
	1	QSC I/O FRAME KIT Bundle QSYS I/O Frame with input and output cards.	\$3,207.90	\$3,207.90
	1	QSC I/O FRAME KIT Bundle QSYS I/O Frame with input and output cards.	\$3,241.20	\$3,241.20
	1	JBL Professional 305P MkII The next-generation JBL 305P MkII powered studio monitor makes legendary JBL performance available to every studio. With the revolutionary JBL Image Control Waveguide and refined transducers, JBL 305P MkII offers stunning detail, precise imaging, a wide sweet spot and impressive dynamic range that enhances the critical listening capabilities of any modern workspace.	\$163.32	\$163.32
	1	Ashly nX4004 Power Amplifier 4 x 400 Watts @ 2, 4 or 8 Ohms or 70V.	\$2,227.74	\$2,227.74
	1	Ashly nX8004 Power Amplifier 4 x 800 Watts @ 2, 4 or 8 Ohms or 70V.	\$2,484.88	\$2,484.88

IMAGE	QTY	DESCRIPTION	PRICE	TOTAL
	1	CCS OFE Loudspeakers and related cabling	\$0.00	\$0.00
	4	CCS OFE Ashley 4-channel Audio amplifiers	\$0.00	\$0.00
	1	CCS OFE Mic Jack plates and related cabling	\$0.00	\$0.00
	1	CCS Lift Rental Outdoor boom lift for work on Arena #2	\$948.00	\$948.00
AUDIO SYSTEM TOTAL				\$15,298.84

CONTROL SYSTEM

IMAGE	QTY	DESCRIPTION	PRICE	TOTAL
	1	QSC TSC-101-G3 Q-SYS 10.1" PoE Touch Screen Controller for In-Wall Mounting. Color - Black only	\$2,160.80	\$2,160.80
	1	Netgear XSM4316PB-100NES M4300-16X POE+ APS600W	\$3,447.44	\$3,447.44
CONTROL SYSTEM TOTAL				\$5,608.24

RACK EQUIPMENT











IMAGE	QTY	DESCRIPTION	PRICE	TOTAL
	1	SurgeX UPS-1000-LI-2 Line Interactive UPS with Surge Eliminator and Power Conditioner, 1000VA, 2RU, Credenza Friendly	\$1,683.85	\$1,683.85
	1	SurgeX SX-DS-208 Defender Series, MultiStage Surge Suppression, Rackmount Power Protection, 20a.	\$201.45	\$201.45
	4	SurgeX SEQ-1U 1RU 9 Outlet 20A Seq. w/ key lock; Ad	\$957.10	\$3,828.40
	1	Middle Atlantic VTF1-CP12 12PC. VTF1 CONTRACT PACK	\$210.60	\$210.60
	2	Middle Atlantic VTF1 1SP FINE PERF VENT PANEL	\$19.50	\$39.00

IMAGE	QTY	DESCRIPTION	PRICE	TOTAL
	1	Middle Atlantic VTF3 3SP FINE PERF VENT PANEL	\$28.08	\$28.08
	1	Middle Atlantic EB2 2RU flanged blank panel	\$14.82	\$14.82
	12	Middle Atlantic EB3 3RU FLANGED ECONO BLANK.	\$17.16	\$205.92
	2	CCS OFE Equipment racks	\$0.00	\$0.00
RACK EQUIPMENT TOTAL				\$6,212.12

CABLES & CONNECTORS

IMAGE	QTY	DESCRIPTION	PRICE	TOTAL
	6	COVID C5E-RJ-BLK-03 Cat 5e, RJ45 to RJ45, Black, 3ft	\$2.49	\$14.94
CABLES & CONNECTORS TOTAL				\$14.94
EQUIPMENT TOTAL				\$27,134.14
LABOR TOTAL				\$36,814.00
SHIPPING				\$596.95
CCS-MAX-STATE-A1				\$1,598.70
PA SYSTEM TOTAL				\$66,143.79

ACCEPTANCE

ACCEPTANCE

PAYMENT SCHEDULE
Please see Terms below

EQUIPMENT TOTAL	\$27,134.14
LABOR TOTAL	\$36,814.00
SHIPPING CCS-MAX-STATE-A1	\$596.95 \$1,598.70
SUBTOTAL	\$66,143.79
TOTAL TAX (CONSTRUCTION)	\$1,831.96
PROJECT TOTAL	\$67,975.75

TERMS

The pricing for this proposal is valid for **14 days from March 4, 2022**. If expired, please contact your CCS Accounts Manager for updated pricing.

Terms are net 30 days from invoice date. Invoices are subject to 1.5% interest charge if not paid within the terms. Returns are allowed within 30 days and with a 25% Restocking fee. No returns on custom items.

I accept this proposal and hereby authorize CCS Presentation Systems - Scottsdale at 17350 N. Hartford Drive Scottsdale, Arizona 85255 to proceed with the purchase of the included equipment for the facilities of TOWN OF QUEEN CREEK constructing at 20464 E. Riggs Rd. Queen Creek, AZ 85142 as described in the totality of this document. In keeping with the Terms of Payment listed above. This proposal is valid only if accepted in writing by TOWN OF QUEEN CREEK within thirty days of the Proposal / Quote Date and the deposit (if required by the terms) is received on or by the Acceptance Date. Price quotes contained herein shall remain valid for a period of no more than 30 days from the Acceptance Date, after which pricing may be subject to increases due to fluctuations in tariffs assessed to CCS on products imported from abroad. Customer understands, acknowledges and assumes full responsibility for any such price increase due to fluctuations in tariff charges incurred after 30 days from the Acceptance Date.

WARRANTY

CCS warrants the system installation to be free of defects in workmanship and fit for the intended purpose for a period of 1-year parts and 90 days labor. This warranty does not cover equipment or system abuse, misuse including but not limited to:

- Operating outside of environmental, electrical, temperature or humidity specifications
- System alterations, not approved, nor performed by CCS or by a service facility other than those authorized by the manufacturer.
- Customer alterations, changes to and or modifications to system equipment. Restoration of system to original state will be billed on a time and materials basis.

After one-year parts and 90 days labor, any future service requirements will be billed on a time and materials basis unless a CCS Service Contract is in place. All new equipment, provided by CCS, includes the manufacturer's warranty. CCS warrants that all AV equipment will be installed in accordance with the manufacturer's recommended environmental and electrical operating conditions and requirements. CCS systems are under warranty against defects in workmanship for a period of 1-year parts and 90 days labor from the date of system acceptance or substantial completion. Owner furnished equipment and products not purchased from CCS are not covered under warranty.

EXCLUSION

CCS Service Level Agreements and Warranties do not cover equipment or system modifications, abuse, misuse including but not limited to:

- Operating outside of environmental, electrical, temperature or humidity specifications
- System alterations, not approved, nor performed by CCS or by a service facility other than those authorized by the manufacturer.
- Customer alterations, changes to and or modifications to system equipment. Restoration of system to original state will be billed on a time and materials basis.

AUTO-RENEWAL

Except as otherwise agreed upon in writing, the initial term of this Agreement shall be one (1) year from the date of this Agreement (the "Initial Period"). This Agreement shall automatically renew each year for successive periods equal to the Initial Period (the "Successive Periods") unless either party gives notice to the other party of intent to terminate this Agreement in writing not less than thirty (30) days prior to the expiration of any Period (the "Notice"). Annual Agreement renewals are subject to rate increases equal to 1% of the total cost of the initial AV System.

CONTROL and or DIGITAL SIGNAL PROCESSOR (DSP) CODE

CCS is not responsible for acquiring existing system Control and or DSP source code. If the current code is not available, cannot be recovered from the system or a previous AV Integrator, the source code will need to be rebuilt at the customer's expense. This process will delay the project schedule. CCS may assist the customer in their attempt to recover the code at our standard hourly labor rate.

INSTALLATION CANCELLATION / CREW CALL OFF / RESCHEDULE FEE

- Once an Install date has been set, and the customer has been notified, if the customer cancels or reschedules less than 24 hours prior to said install date, a cancellation/rescheduling crew fee of the crews' loss time may be charged for each occurrence.
- If onsite and the crews are asked to leave due to customer reasons, a crew fee of the crews' loss time and trip charge may be charged for each occurrence.

PRODUCT RETURNS

- Approval from a CCS Manager, and/or manufacturer, must be received before returns will be accepted.
- Custom items are not eligible for return. Custom specialty items to include but not limited to projection screens, furniture etc.
- Product must be undamaged, in the original packaging and has all accessories & paperwork.
- CCS customers will be charged a restock fee up to 25% and return shipping if it is the customer's decision to cancel or change an order once the product has been received.



- Credit will only be applied once CCS has received the return authorization from the vendor.

ACCEPTANCE

TOWN OF QUEEN CREEK

SIGNED

DATE

PRINT NAME

TITLE

CCS PRESENTATION SYSTEMS - SCOTTSDALE

SIGNED

DATE

PRINT NAME

TITLE



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 TOWN OF QUEEN CREEK AND THE QUEEN CREEK UNIFIED SCHOOL DISTRICT (QCUSD) FOR CONTRIBUTION TOWARD THE CONSTRUCTION OF TRAFFIC SIGNAL: QCUSD CRISMON HIGH SCHOOL AND RIGGS ROAD (CIP PROJECT I0049) IN THE AMOUNT OF \$375,000 AND THE NECESSARY BUDGET ADJUSTMENTS.

DATE: April 20, 2022

Suggested Action:

To approve an Intergovernmental Agreement between The Town of Queen Creek and the Queen Creek Unified School District for contribution toward the construction of Traffic Signal: QCUSD Crismon High School and Riggs Road in the amount of \$375,000 and the necessary budget adjustments.

Relevant Council Goal(s):

Superior Infrastructure - Capital Improvement Program

Discussion:

With the development of the new Crismon High School, the Queen Creek Unified School District and the Town have agreed that for the safety and welfare of the public, a new traffic signal would be designed and installed to serve the High School on Riggs Road at the realigned Crismon Road.

The new high school resides on the northeast corner of the realigned intersection of Crismon Road and Riggs Road. Town standards require that the developer of each respective corner of an intersection pay for their share of the improvements. The QCUSD does not have the ability to seek reimbursement from future developers for the costs incurred for their section of the traffic signal construction, so the Town has agreed to fund 75% of the cost of construction for the signal and will recover 50% of these costs from the vacant parcels as they develop. The other 25% is the responsibility of the Town due to its location as an access point into a future park.

The total anticipated cost for construction of the signal is \$500,000, making the Town's portion of the cost \$375,000.

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

- A. The QCUSD will act as the project lead and will provide funding for the design and construction of the proposed traffic signal.
- B. The Town will reimburse the QCUSD for 75% of the cost of construction of the signal improvements.

The signal construction is scheduled to begin immediately.

Fiscal Impact:

The total cost of the traffic signal is \$500,000 and the Town of Queen Creek will be covering 75% or \$375,000 of the cost of construction.

Project I0049 Traffic Signal: QCUSD Crismon High School and Riggs Road was not included in the FY 2021/22 Adopted Budget, and a budget adjustment of \$375,000 from the FY 2021/22 CIP Contingency will be needed. The following table summarizes the budget adjustment required:

Project	Name	75% of Design & Construction Costs	FY 2021/22 Adopted Budget	Contingency Required
I0049	Traffic Signal: QCUSD Crismon High School and Riggs Road	\$375,000	\$	375,000

This project will be funded 25% by the school district, 50% by future developers, and 25% by the Town due to its location as an access point into a future park.

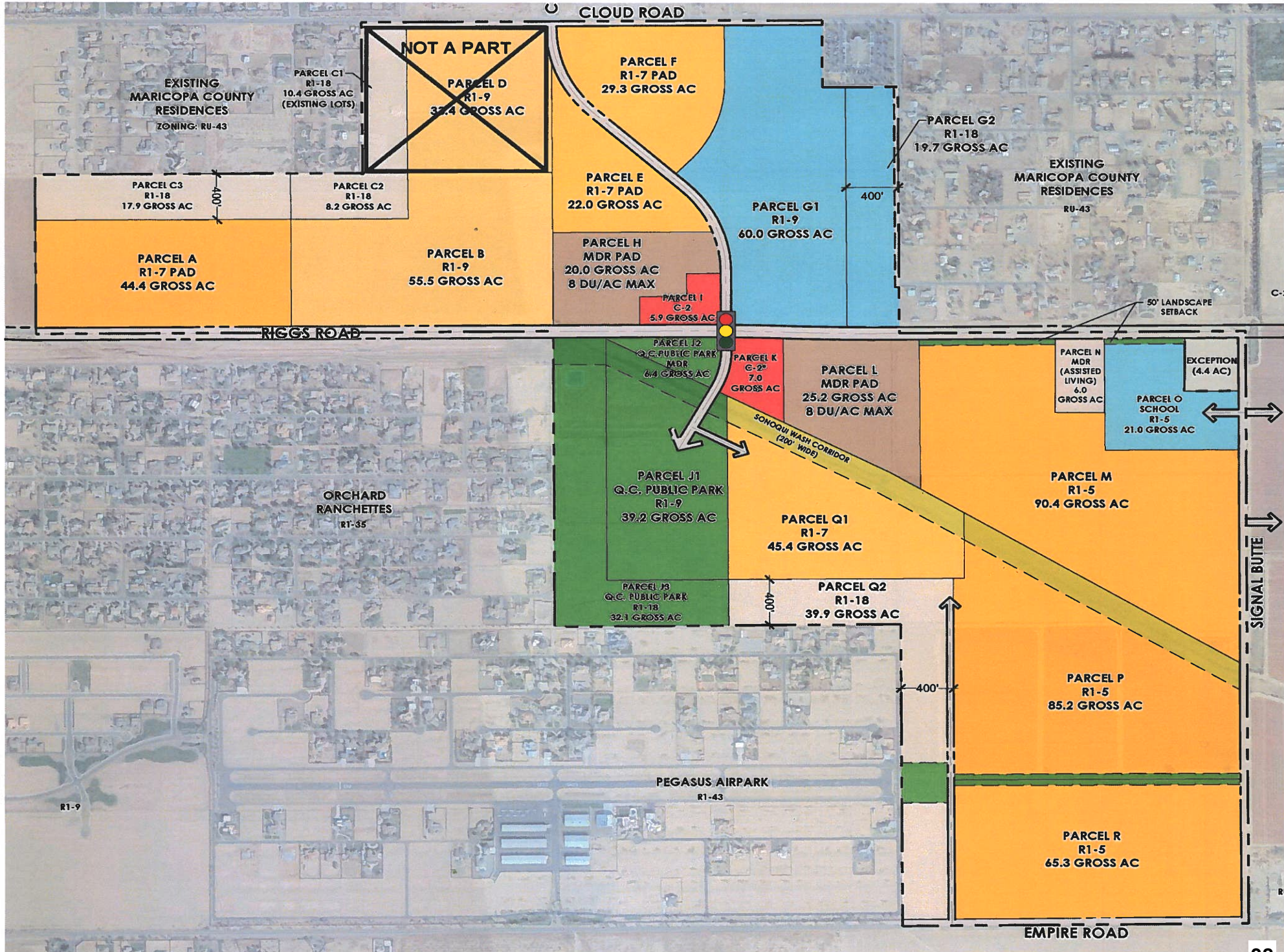
Alternatives:

Council may decide not to move forward with the IGA, causing QCUSD to cover the entire cost of construction of the traffic signal.

Attachment(s):

1. [Site Location Exhibit](#)
2. [IGA with QCUSD for Traffic Signal at Crismon High School and Riggs Road](#)

Site Location Exhibit



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
TOWN OF QUEEN CREEK AND QUEEN CREEK UNIFIED
SCHOOL DISTRICT #95 FOR CONTRIBUTION TOWARD THE
CONSTRUCTION OF A TRAFFIC SIGNAL AT 21942 EAST
RIGGS ROAD IN QUEEN CREEK**

This Intergovernmental Agreement (“Agreement”) made this ___ day of _____, 2022 by and between the Town of Queen Creek, Arizona, a municipal corporation (hereinafter referred to as the “Town”), and the Queen Creek Unified School District #95, a political subdivision of the State of Arizona (hereinafter referred to as “QCUSD”). Town and QCUSD are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”.

1. STATUTORY AUTHORITY

Town is authorized to enter into this Agreement pursuant to A.R.S. § 11-952 and has authorized the undersigned to execute this Agreement on behalf of Town.

QCUSD is authorized to enter into this Agreement pursuant to A.R.S. §§ 11-952 and 15-995 and has authorized the undersigned to execute this Agreement on behalf of QCUSD.

2. BACKGROUND, PURPOSE, AND MUTUAL UNDERSTANDING OF THE AGREEMENT

Town and QCUSD desire to work in cooperation to provide signalized access to the new QCUSD High School Located at 21942 E. Riggs Road, Queen Creek AZ 85142 (“Project”). The Project is necessary for the safety and welfare of the students, staff and families at the School, as well as the general public. The total estimated cost for construction of the Project is \$500,000, and Town will fund 75% of the construction of the Project. The construction of the Project is anticipated to begin in FY 2021/2022.

It is understood that due to long lead times of certain materials required for the Project, the Town will provide QCUSD and their contractor traffic signal supplies (“Materials”) to complete the Project. It is also understood that any Materials supplied by the Town shall be replenished by QCUSD and delivered by QCUSD’s contractor to a location to be determined by the Town’s Public Works Director. Any Materials replenished by QCUSD or its contractors shall be delivered to the Town at no additional cost and within a reasonable time after receiving those Materials.

3. TOWN OBLIGATIONS

3.1. Cooperate with QCUSD to facilitate construction of the Project and execute any and all approvals and other documents necessary for the safe, efficient and full completion of the Project.

3.2. Create a mutually agreed upon Materials list (“Materials List”) between QCUSD and the Town’s Public Works Director outlining Materials to be provided by the Town and supplied to QCUSD for the completion of the Project.

3.3. Provide a location to QCUSD and its contractor for delivery of any materials to be replenished from the Materials List.

3.4. Upon completion of construction of the Project and verifying the cost of construction for the Project, reimburse QCUSD for 75% of the cost of construction of the Project.

4. QCUSD OBLIGATIONS

4.1. Act as the Project Lead to construct the Project and be responsible for solicitation, contract management, public outreach coordination, project meetings, and other related duties for the Project.

4.2. Create a mutually agreed upon Materials List between QCUSD and the Town's Public Works Director outlining materials to be provided by the Town and supplied to QCUSD for the completion of the Project.

4.3. Replenish certain Materials, as designated on the Materials List, to the Town within a reasonable time from receiving those materials that were delayed due to long lead times.

4.4. Refrain from charging any additional costs for replenished materials delivered to the Town by QCUSD or its contractor.

4.5. Upon completion of the Project, invoice Town for 75% of the cost of construction of the Project.

5. INDEMNIFICATION

Each Party to this Agreement (as "Indemnitor") agrees to defend, indemnify and hold harmless the other Party, and such Party's officers, officials, employees, agents, and directors (collectively, "Indemnitee") from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys' fees and costs of defense and appellate appeal) ("Claims"), which may be imposed upon, incurred by or asserted against the Indemnitee, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, acts, errors, or omissions of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable, in the performance of this Agreement.

The provisions of this Section 5 shall survive the termination of this Agreement.

6. TERM

This Agreement shall be effective as of the date set forth above and terminate upon the payment by Town hereunder. Each Party agrees to return any and all equipment and/or property in its control or possession owned by the other Party to the owner-Party no later than thirty (30) days after termination.

7. DISPUTE RESOLUTION

The Parties agree to work in good faith to attempt to resolve any disputes at a level nearest the school as possible. If the dispute is not resolved through elevation through all levels of those processes, the dispute shall be resolved through litigation.

8. GENERAL

8.1. **Amendment.** This Agreement may not be modified, except by written amendment, duly executed by both Parties.

8.2. **Insurance.** The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations, and actions as set forth in

this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insurance program may fulfill the insurance requirement.

8.3. **Conflict of Interest.** Pursuant to the provisions of A.R.S. § 38-511, either Party may cancel this Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of that Party at any time while the Agreement or any extension thereof is in effect an employee of any other Party to the Agreement in any capacity to any other Party to the Agreement with respect to the subject matter of the Agreement.

8.4. **Incorporation.** All recitals and appendices contained in this Agreement are hereby incorporated by this reference and made an integral part of it.

8.5. **Governing Law.** This Agreement shall be governed, construed and controlled according the laws of the state of Arizona.

8.6. **Waiver.** It is agreed and understood that any failure to strictly enforce any provision hereof shall not constitute a waiver of the right to demand performance of that or any other provision hereof at any time thereafter.

8.7. **Severability.** The terms and conditions of this Agreement are severable. If for any reason, any court of law or administrative agency should deem any provision hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.

8.8. **Legal Fees, Costs and Expenses.** In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and expenses, as determined by the court, and which shall be deemed to have accrued on the commencement of such action.

8.9. **Notices.** 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.

If to the Town:

Town of Queen Creek
Attn: Dave Lipinski, PE, CIP Dept. Director
22350 Ellsworth Rd.
Queen Creek, AZ 85142

If to the School District:

Queen Creek Unified School District #95
Attn: Chief Financial Officer
20217 East Chandler Heights
Queen Creek, AZ 85142

A notice shall be deemed received on the date delivered if delivered by hand, 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. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission. E-mail is not an acceptable means

for meeting the requirements of this section unless otherwise agreed in writing.

8.10. **Entire Agreement.** This writing constitutes the entire Agreement between the Parties.

8.11. **Assignment.** Services covered by this Agreement shall not be assigned or sublet in whole or in part without the prior written consent of the Parties.

8.12. **Force Majeure.** Neither Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

8.13. **Counterparts.** This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.

8.14. **Captions.** The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

8.15. **Compliance with Immigration Laws.** Pursuant to the provisions of A.R.S. § 41-4401, the Parties warrant that they 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). Each Party has the right to inspect the papers of the other Party or its subcontractors participating in this Agreement to ensure compliance with this paragraph. A Party's or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by a non-breaching Party under the terms of this Agreement.

The provisions of this Article must be included in any contract either Party enters into with any and all subconsultants or subcontractors who provide services under this Agreement. As used in this Section 8.15, "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

8.16. **Records and Audit Rights.** All accounts, reports, files and other records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary and relating to this Agreement shall be kept for three (3) years after termination of this Agreement and shall be open to reasonable inspection and audit by the other Party during that period.

8.17. **Authority.** The Parties hereby warrant and represent that each has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. The Parties further acknowledge having read this Agreement and understanding it, and do agree to be bound by it.

8.18. **Non-Discrimination.** The Parties agree that, in fulfilling the obligations set forth in this agreement, they shall not discriminate against any person on the basis of race, color, national origin or ancestry, religion, age, disability, and genetic information. The Parties agree further to comply with Executive Order 2009-09, and all other applicable State and Federal employment laws, rules and regulations, mandating that all persons shall have equal access to employment opportunities.

8.19. **Confidentiality of Student Records.** The Parties agree that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act (“FERPA”). The Parties acknowledge that during the term on this Agreement, the SRO shall be the designated law enforcement unit and shall also be considered as a “school official” who may, at times, have a “legitimate educational interest” in the educational records of a student or students.

[SIGNATURES ON NEXT PAGES]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives.

QUEEN CREEK UNIFIED SCHOOL DISTRICT #95

By _____

Board President

Date _____

ATTEST:

Superintendent

Date _____

APPROVAL OF ATTORNEY FOR THE QUEEN CREEK UNIFIED SCHOOL DISTRICT #95

The foregoing Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned counsel who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

School District Attorney

Date _____

TOWN OF QUEEN CREEK

Recommended by:

John Kross, Town Manager

Date _____

Approved and Accepted by:

Gail Barney, Town Mayor

Attest:

Maria Gonzalez, Town Clerk

Date _____

APPROVAL OF ATTORNEY FOR THE TOWN OF QUEEN CREEK

The foregoing Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned counsel who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Queen Creek Attorney

Date _____



TOWN OF
QUEEN CREEK
ARIZONA

8.E

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: RANDY BRICE, CHIEF OF POLICE

RE: CONSIDERATION AND POSSIBLE APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF QUEEN CREEK AND THE ARIZONA CHILD ABDUCTION RESPONSE TEAM (AZCART) TO PROVIDE A POOL OF SPECIALIZED INVESTIGATORS FOR CASES INVOLVING ABDUCTED OR AT-RISK MISSING CHILDREN.

DATE: April 20, 2022

Suggested Action:

To approve an Intergovernmental Agreement between The Town of Queen Creek and the Arizona Child Abduction Response Team (AZCART) to provide a pool of specialized investigators for cases involving abducted or at-risk missing children.

Relevant Council Goal(s):

1. Safe Community (Public Safety)
2. Effective Government (Intergovernmental Relations)

Discussion:

The Arizona Child Abduction Response Team (AZCART) is a response team consisting of specialized investigators from multiple law enforcement agencies across the state who are available to assist with child abduction or at-risk missing child investigations, including confirmed or suspected non-family child abductions, confirmed or suspected family or non-custodial parent abduction with endangerment circumstances, or any other at-risk missing child investigation requiring immediate response in order to protect the life or well-being of a child.

Participating Arizona law enforcement agencies may request law enforcement assistance to/from other AZCART agencies in dealing with serious violations of law including, but not limited to the investigation, arrest, and prosecution of those involved in criminal child kidnapping, abduction, false imprisonment, and similar or related violations (utilizing state and federal law and prosecutions, as appropriate); the rescue of the abducted child or children; and the seizure and forfeiture of assets of those engaged in child abduction or otherwise supporting such activity, utilizing applicable state and federal forfeiture laws, as may be appropriate.

An AZCART activation can include but is not limited to: a Limited Team (Hasty Team) call out for the

purposes of consulting with the primary jurisdiction or a call out for conducting a specific task, a Technical Team call out for cell tower analysis, foreign language translation, dedicated forensic interviews, specialized equipment, etc., or a Full Team call out for neighborhood and roadside canvassing, criminal investigation assistance, lead management assistance, area searches, crime scene management assistance, intelligence gathering, etc.

The primary goal of the Arizona Child Abduction Response Team is to provide a pool of specialized investigators, who are available to focus dedicated and intensive investigative, preventative, and general law enforcement efforts, primarily concerning cases involving abducted or at-risk missing children.

The agreement addresses the procedures for activation of the CART. Any party to the agreement can request activation of CART, and the party that has jurisdiction over the incident or investigation will remain as the lead agency with support from other CART agencies. Under the agreement, all parties are responsible for their own costs. If approved, the proposed agreement shall remain in effect until June 30, 2030.

Fiscal Impact:

This IGA does not require any additional funds.

Alternatives:

1. Council could choose not to approve this IGA. However, the police department would have fewer resources with which to respond to endangered or abducted missing children.
2. Council could direct staff to change or modify the proposed IGA. However any additional changes or modifications will delay the agreement and the availability of much needed resources.

Attachment(s):

1. [AZCART IGA.pdf](#)

1 **INTERGOVERNMENTAL AGREEMENT**
2 **FOR PARTICIPATION IN THE ARIZONA CHILD ABDUCTION RESPONSE TEAM**
3

4 This Agreement is entered into pursuant to A.R.S. §§11-951, *et seq.*, and A.R.S. §13-3872 by and
5 among any and all Cities, Towns, Agencies and other entities that have signed, recorded and
6 entered into this agreement.
7

8 The aforementioned entities shall hereinafter be known collectively as the Arizona Child
9 Abduction Response Team (AZCART). Any other public agencies, as that term is defined in
10 A.R.S. § 11-951, which after invitation by AZCART, comply with the provisions of A.R.S. §§11-
11 951 *et seq.* and subsequently signs this Agreement shall become Parties to this Agreement. As new
12 agencies are invited and agree to sign this agreement, AZCART will be sure to update and
13 distribute its list of member agencies. Each AZCART agency shall provide a copy of its fully
14 executed agreement to the AZCART State Coordinator or designee under Article III(C) below..
15 In addition to the above, all subsequent parties to this Agreement will be included in any collective
16 reference to and will also be collectively known as, or referred to as, one of the “Parties” hereto.
17

18 **I. PURPOSE AND INTENT OF AGREEMENT**
19

20 The purpose of this Agreement is to create an Arizona Child Abduction Response Team
21 (AZCART). The primary goal of the Arizona Child Abduction Response Team is to provide a pool
22 of specialized investigators, who are available to focus dedicated and intensive investigative,
23 preventative, and general law enforcement efforts, primarily concerning cases involving abducted
24 or at-risk missing children. AZCART and other Arizona law enforcement agencies may request
25 and render law enforcement assistance to/from other AZCART agencies in dealing with serious
26 violations of law including, but not limited to: the investigation, arrest, and prosecution of those
27 involved in criminal child kidnapping, abduction, false imprisonment, and similar or related
28 violations (utilizing state and federal law and prosecutions, as appropriate); the rescue of the
29 abducted child or children; and the seizure and forfeiture of assets of those engaged in child
30 abduction or otherwise supporting such activity, utilizing applicable state and federal forfeiture
31 laws, as may be appropriate).
32

33 Additionally, the location of each Party’s jurisdiction in relation to each other makes it
34 advantageous to enter into this Agreement, in order to receive and extend mutual aid in the form
35 of law enforcement services and resources, to respond to continuing, multi-jurisdictional criminal
36 activity such as that described above.
37

38 **II. AUTHORITY TO ENTER INTO THIS AGREEMENT**
39

40 A. The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S.
41 §§11-951 *et seq.*, A.R.S. §13-3872 and the respective provisions of their City Charters, Tribal
42 Constitution, or other governing statute or authority.
43

44 If any Native American community requests AZCART assistance, consideration should be given
45 for granting all assisting AZCART team members tribal peace officer authority for the duration of
46 the AZCART activation within the applicable tribal jurisdiction if and when required.
47

48 **III. CART ACTIVATION, PROCEDURES AND RESOURCES** 49

50 A. Any Party to the Agreement or authorized representative of any Arizona law enforcement
51 agency may request activation of AZCART. An activation can include but is not limited to: a
52 Limited Team (Hasty Team) call out for the purposes of consulting with the primary jurisdiction
53 or a branch-only call out for conducting a specific task, a Technical Team call out for cell tower
54 analysis, foreign language translation, dedicated forensic interviews, specialized equipment, etc.,
55 or a Full Team call out for neighborhood and roadside canvassing, criminal investigation
56 assistance, lead management assistance, area searches, crime scene management assistance,
57 intelligence gathering, etc..
58

59 It shall be the responsibility of the Party or authorized representative requesting activation to
60 contact the designated Google Voice number of 480-442-2784 to be put in touch with the
61 AZCART State Coordinator or designee for vetting of the request for activation.
62

63 The criteria for an AZCART activation include one or more of the following: a confirmed or
64 suspected non-family child abduction, a confirmed or suspected family or non-custodial parent
65 abduction with endangerment circumstances, and/or any other at-risk missing child investigation
66 requiring immediate response in order to protect the life or well-being of a child as determined by
67 the AZCART State Coordinator or designee.
68

69 Endangerment circumstances are defined as: when a child's life or well-being is perceived to be
70 at risk due to violence or health conditions and/or if the abducting party has the potential for
71 violence or is expected to otherwise endanger the child. At-risk factors can include but are not
72 limited to: child is deemed special needs due to a medical diagnosis or diagnosed behavioral
73 condition, child has a life-threatening health condition, child is medicine/drug dependent, child is
74 13 years of age or younger therefore at risk of exploitation, signs are present consistent with sexual
75 exploitation, or child is absent in a way inconsistent with established patterns of behavior without
76 explanation, etc.
77

78 B. The Agency that has legal jurisdiction over the incident or investigation will remain as the lead
79 agency during the duration of a particular AZCART activation with support from AZCART
80 agencies.
81

82 C. One lead AZCART State Coordinating Agency led by a AZCART State Coordinator as well as
83 two branch (Northern and Southern) coordinating agencies each led by a AZCART Branch
84 Coordinator will be selected by the AZCART Steering Committee members subject to final
85 approval of chief law enforcement officers (chiefs) of the AZCART agencies selected on a rotating
86 basis for a term of at least one year, which shall correspond with the effective date of the
87 Agreement. The individual State or applicable Branch Coordinator will be selected by that
88 coordinating agency. In the event that a State or Branch AZCART Coordinator is unable to

89 complete his or her term due to retirement, resignation from his or her agency, change in primary
90 assignment, promotion, or for any other reason, the coordinating agency should name a
91 replacement coordinator from within their agency to fulfil the remainder of the year term.

92
93 D. The AZCART State Coordinating Agency will have primary responsibility over maintaining
94 U.S. Department of Justice certification, compliance, and reporting, as well as maintaining IGA
95 compliance within Arizona. The State Coordinating Agency will handle primary vetting of
96 AZCART activation requests to ensure criteria have been adequately met. The State Coordinating
97 Agency will have primary responsibility for AZCART activations in Maricopa, Yuma, Pinal, La
98 Paz, Gila, Graham and Greenlee Counties. The AZCART State Coordinating Agency will provide
99 oversight and support to any Northern or Southern AZCART Branch activation. The AZCART
100 Northern Branch Coordinating Agency falls under the responsibility and oversight of the State
101 Coordinating Agency and will have primary responsibility over coordinating the response for
102 AZCART activations in Mohave, Coconino, Yavapai, Navajo and Apache Counties. The
103 AZCART Southern Branch Coordinating Agency falls under the responsibility and oversight of
104 the State Coordinating Agency and will have primary responsibility over the response for
105 AZCART activations in Pima, Santa Cruz and Cochise Counties.

106
107 E. The AZCART State and Branch Coordinators or designees will be responsible for coordinating
108 on-going training, meetings or other necessary supporting functions in support of the operational
109 effectiveness of AZCART. The AZCART State Coordinator shall be responsible for mediating
110 any jurisdictional or AZCART activation disputes between the Parties during an AZCART
111 activation. In the event such mediation fails, the issue shall be brought to the attention of the
112 applicable AZCART Chiefs and/or Sheriffs or their designees for appropriate resolution.

113
114 F. Each Party shall, to the best of its ability, designate at least one sworn law enforcement officer
115 available along with supporting equipment such as vehicles in support of any AZCART activation.
116 Each Party shall designate a primary AZCART member to participate in activations, meetings,
117 trainings, etc. Each Party shall immediately inform the AZCART State Coordinator or designee
118 when such designations change. In the event a primary CART member is not available or as the
119 situation dictates, an AZCART agency may provide officers not normally designated as AZCART
120 members in support of an AZCART activation.

121
122 G. Each Party shall have the sole discretion to determine how many and/or how long any of its
123 personnel or resources shall be assigned in support of an AZCART activation.

124
125 H. Each Party shall have the ability to have representation on the AZCART Steering Committee.
126 The AZCART Steering Committee shall be run by the current State Coordinating Agency and is
127 responsible for meeting quarterly either in person or virtually at the discretion of the State
128 Coordinating Agency. AZCART Steering Committee meetings shall serve the purpose of
129 discussing AZCART related matters, soliciting feedback on current and past AZCART activations,
130 preparing quarterly training for AZCART membership as well as soliciting and selecting suitable
131 agencies for rotation as State or Branch Coordinating Agencies. In the event multiple agencies
132 desire to be the State or Branch Coordinating Agency a majority vote of the AZCART Steering
133 Committee at the designated 4th quarterly meeting shall make the determination with the vote of

134 the current AZCART State Agency acting as a tiebreaker if needed. In the event not all replacement
135 coordinating agencies are identified by the 4th quarterly meeting, the current State or Branch
136 Coordinating Agency will have the option of remaining in place on a month-to-month basis until
137 a replacement agency is found. If a Branch Coordinating Agency cannot be determined, then those
138 activation responsibilities will fall back under the State Coordinating Agency until a replacement
139 is found.

140
141

142 **IV. COSTS AND ANY REIMBURSEMENT**

143

144 The Parties will be responsible for any and all associated costs accrued in implementing this
145 Agreement that are incurred by their respective agencies, to include, but are not limited to,
146 employee salary, shift differential pay, overtime compensation, benefits, vehicles, equipment, etc.
147 If any Party receives grant funds designated for the Arizona Child Abduction Response Team,
148 some or all of these expenses may be reimbursed to the Parties. In no event shall any Party charge
149 other Parties for any administrative fees for any work performed pursuant to this Agreement.

150

151 **V. NON-DISCRIMINATION**

152

153 The Parties to this Agreement shall comply with all applicable provisions of state and federal non-
154 discrimination laws and regulations including, but not limited to, that all persons, regardless of
155 race, color, religion, sex, age, marital status, sexual orientation,, gender identification or
156 expression, genetic characteristics, familial status, national origin or political affiliation, U.S.
157 military veteran status or disability, shall have equal access to employment opportunities and all
158 other federal and state employment and educational opportunity laws, rules and regulations,
159 including the Americans with Disabilities Act; provided however, an Indian Community is subject
160 to 25 U.S.C. § 450e(c). No Party shall engage in any form of illegal discrimination.

161

162

163 **VI. INDEMNIFICATION**

164

165 Each Party agrees that it will be responsible for any liability or loss that may be incurred as a result
166 of any claim, demand, cost or judgement made against that party to the extent arising from any
167 negligent, reckless or intentional act or omission by any of that party's employees, agents, or
168 servants in connection with work or responsibilities performed pursuant to this Agreement.

169

170 To the extent permitted by law, each Party does hereby covenants and agrees, to indemnify, defend,
171 and hold harmless the other Party, their elected officials, appointees, officers, employees,
172 contractees, and agents from and against any and all suits, actions, legal or administrative
173 proceedings, claims, demands or damages of any kind or nature relating to this Agreement which,
174 are the result of any act or omission of the Party, its officers, employees, contractees, agents, and
175 anyone acting under its direction or control, whether intentional or negligent, in connection with
176 or incident to this Agreement. Failure of a Party to comply with the terms of this Agreement shall
177 not provide the basis of any third-party action against any of the Parties.

178

179 **VII. DISPUTES/GOVERNING LAW JURISDICTION/VENUE**

180
181 All parties to this Agreement shall make every effort to resolve conflicts with the parties involved.
182 If settlement is not obtained, then parties may submit a grievance to litigation. The laws of the
183 State of Arizona shall govern this Agreement. If a dispute arises under this agreement, which
184 cannot be resolved by the Parties, it shall be resolved by litigation. Jurisdiction will be in the State
185 of Arizona. Venue will be in the Maricopa County Superior Court, unless the subject matter of the
186 dispute involves an Indian Community, then venue shall be in the Federal District Court for the
187 State of Arizona. In the event of any litigation or arbitration arising out of this Agreement, the
188 substantially prevailing Party in such litigation or arbitration shall be entitled to recover its
189 reasonable attorney's fees, expert witness fees and other reasonable costs of litigation.

190
191 **VIII. DURATION AND CANCELLATION OF AGREEMENT**

192
193 A. This Agreement shall become effective on January 11, 2022 and must be filed with the
194 appropriate County Recorder prior to the effective date. This agreement shall remain in effect until
195 June 30, 2030, unless otherwise terminated by the terms of this Agreement or operation of law.
196 Failure by one or more Parties to execute the Agreement shall not invalidate the Agreement as to
197 those Parties who did so. Any Party may withdraw from this Agreement with or without cause by
198 giving (30) thirty calendar days' written notice to the AZCART State Coordinator or designee.

199
200 B. This Agreement may be administratively extended by each Party at the direction of the
201 applicable legislative body with the recommendation of the chief law enforcement officer for each
202 Party on or before the Termination date for a period of an additional five years by notifying the
203 AZCART State Coordinator or designee in writing. Any Party which fails to do so by the
204 termination date listed above shall no longer be a Party to the Agreement.
205

206 **IX. CANCELLATION PROVISIONS PURSUANT TO A.R.S §38-511**

207
208 As prescribed by A.R.S. § 38-511 as amended, either Party may cancel this Agreement after its
209 execution and without penalty or further obligation if any person significantly involved in
210 initiating, negotiating, securing, drafting or creating the contract on behalf of either Party is, at any
211 time while the Agreement or any extension thereof is in effect, an employee or agent of either
212 Party to the contract in any capacity or a consultant to any other Party to the Agreement with
213 respect to the subject of this Agreement. In the event either Party elects to exercise its right under
214 A.R.S. § 38-511 as amended, the Party agrees to give notice thereof immediately in writing to the
215 other Party.
216

217 **X. MULTIPLE COUNTERPARTS**

218
219 This Agreement may be executed in multiple counterparts, each of which shall be deemed an
220 original, but all of which together shall constitute one and the same instrument. Neither a signature
221 for every Party nor a signature line shall be required in each counterpart except that on a
222 counterpart being brought forward by a Party to its legislative body or equivalent for approval, that

223 particular counterpart shall have to be signed and executed in accordance with that Party's practice.
224 The signature pages from one or more counterparts may be removed from such counterparts and
225 such signature pages all attached to a single instrument so that the signatures of all Parties may be
226 physically attached to a single document.
227

228 **XI. WORKER'S COMPENSATION**

229
230 Pursuant to A.R.S. §23-1022(D), for the purposes of worker's compensation coverage, an
231 employee of a public agency, as defined in section 11-951, who works under the jurisdiction or
232 control of or within the jurisdictional boundaries of another public agency pursuant to a specific
233 intergovernmental agreement or contract entered into between the public agencies as provided in
234 section 11-952, is deemed to be an employee of both public agencies for the purposes of this
235 section. The primary employer shall be solely liable for the payment of workers' compensation
236 benefits for the purposes of this section.

237 **XII. OTHER PROVISIONS**

238
239 A. In the event that any provision of this Agreement shall be held invalid or unenforceable by any
240 court of competent jurisdiction, such holding shall not affect the validity or enforceability of any
241 other provision hereof.
242

243 B. This Agreement contains the entire understanding between the Parties with respect to the
244 subjects hereof and supersedes all prior negotiations and agreements. This Agreement may be
245 amended only by an instrument in writing and signed by all the participating Parties. The waiver
246 of any breach of this Agreement shall not be deemed to amend this Agreement and shall not
247 constitute waiver of any other subsequent breach. Headings are for convenience and shall not
248 affect interpretation.
249

250 C. This Agreement shall be recorded with the appropriate County Recorder as described above
251 upon its execution and a copy shall be forwarded to each Party by the AZCART State Coordinator
252 or designee.
253

254 D. Nothing within this Agreement shall be construed to limit the ability of participating Arizona
255 Child Abduction Response Team members to individually and outside of this Agreement, or as
256 otherwise allowed for by law, provide, such assistance in any enforcement action as may be
257 lawfully requested by a law enforcement officer having jurisdiction over an incident, crime or
258 matter under consideration.
259

261 **XIII. COMPLIANCE WITH E-VERIFY PROGRAM**

262
263 A. To the extent provisions of A.R.S. §41-4401 are applicable, all Parties warrant to each Party
264 that they will comply with all Federal Immigration laws and regulations that relate to their
265 employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).
266

267 B. A breach of this warranty will be considered a material breach of this Agreement and may
268 subject the breaching party to penalties up to and including termination of this Agreement.
269

270 C. The AZCART State Coordinator or designee retains the legal right to inspect the papers of any
271 employee who works pursuant to this Agreement or any related subcontract to ensure compliance
272 with the warranty given above.
273

274 D. The AZCART State Coordinator or designee may conduct a random verification of the
275 employment records of any Party to ensure compliance with this warranty.
276

277 E. A Party will not be considered in material breach of this Agreement if it establishes that it has
278 complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of
279 the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S.
280 §23-214(A).
281

282 F. The provisions of this Article must be included in any contract either Party enters into with any
283 and all of its contractors or subcontractors who provide services under this Agreement.
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285
286 **XIV. NOTICES**
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288 Any notice required to be given under this Agreement will be provided to the AZCART State
289 Coordinator or designee. Each party to this agreement shall receive notice to the Chief of Police
290 and to City or Town Attorneys for that jurisdiction.
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295 IN WITNESS WHEREOF, the Party named below has executed this Agreement on
296 _____.
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300 **TOWN OF QUEEN CREEK**

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302 By: _____

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304 Mayor

305 ATTEST:
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308 Town Clerk
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APPROVED AS TO FORM:

Scott A. Holcomb
Town Attorney

Reviewed By: _____

Randy Brice
Chief of Police

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INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who determined that this Agreement is in appropriate form and is within the powers and authority of the respective parties.

Town of Queen Creek

By: _____

Scott A. Holcomb
Town Attorney

Date: _____

4850-2035-7370 v2 [53749-44]



TOWN OF
QUEEN CREEK
ARIZONA

8.F

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: RANDY BRICE, CHIEF OF POLICE

RE: CONSIDERATION AND POSSIBLE APPROVAL OF A COOPERATIVE PURCHASE AGREEMENT (CPA) WITH FLOCK GROUP, LLC FOR A FIXED CAMERA ALPR SOLUTION UTILIZING THE CITY OF TEMPE CONTRACT NOT TO EXCEED \$46,000. (FY 21/22 BUDGETED ITEM)

DATE: April 20, 2022

Suggested Action:

To approve a Cooperative Purchase Agreement with Flock Group, LLC for Fixed Camera ALPR Solution utilizing the City of Tempe Contract not to exceed \$46,000. (FY 21/22 Budgeted Item)

Relevant Council Goal(s):

1. Safe Community (Public Safety)
2. Superior Infrastructure (Technology)

Discussion:

Community policing, which centers police-constituent relations to build trust and collaboration, has been proven to improve outcomes and increase public safety. However, the trust is based on more than just transparency. Studies have further shown that legitimacy is only established when transparency is coupled with competence, agility, and responsiveness. However, staffing conditions will never allow police to be everywhere continually. Technology provides a means for the Police Department to augment human resources, filling in the gaps in patrolling, investigation, and watchfulness necessary to sustain public safety, trust, and legitimacy.

For many jurisdictions, nearly 70 percent of crimes are committed with the use of a vehicle. The Flock Automated License Plate Reader (ALPR) system captures vehicle details that are critical to tracking leads and solve crime. More specifically the Flock Safety's patented Vehicle Fingerprint™ technology lets you search by vehicle make, color, type, license plate, state of the license plate, missing plate, covered plate, paper plate, and unique vehicle details like roof racks, bumper stickers, and more.

- The cameras are Motion Activated and take pictures of the back of the vehicle as it drives by.
- The cameras provide 24/7 Coverage and collect evidence around the clock.
- The cameras are solar powered and connect to the cloud using encrypted LTE connectivity. This allows the devices to be installed without heavy infrastructure almost anywhere.

This contract provides a SAAS based approach which includes software, data, cloud storage, device

installation, and maintenance, and access to a network of 1B+ plate reads/month for one subscription price.

Fiscal Impact:

This action authorizes a Cooperative Purchase Agreement (CPA) with Flock Group, LLC for Fixed Camera ALPR Solution utilizing the City of Tempe Contract with an initial cost not to exceed \$46,000. Subsequent yearly subscriptions costs total \$37,500 (based an annual budget approval). Costs associated with these services have been included in the FY21-22 Budget

Alternatives:

1. Council could choose not to approve this agreement. However, the police department would not have the ability to gather essential evidence provided by this system.
2. Council could direct staff to change or modify the proposed agreement. However, this would lead to a delay in implementing the program.

Attachment(s):

1. [TOQC Cooperative Purchase Agreement.pdf](#)

COOPERATIVE PURCHASE AGREEMENT

THIS AGREEMENT (The “Agreement”) is made and entered into effective as of April 20, 2022 (the “Effective Date”), by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation (“Town”), and Flock Group, Inc. a Delaware corporation (“Vendor”). The Town and the Vendor are sometimes referred to in this Agreement collectively as the “Parties” and each individually as a “Party.”

RECITALS:

WHEREAS, the Town requires Fixed Camera ALPR Solution for Police; and

WHEREAS, Fixed Camera ALPR Solution for Police is available through a cooperative contract with City of Tempe; and

WHEREAS, The Parties wish to enter into an Agreement pursuant to the terms and conditions of that outside contract number T21-119-01 and all subsequent revisions, between City of Tempe and the Vendor (the “Original Contract”) Such action is authorized under A.R.S. §41-2632 and is pursuant to the terms of the Maricopa County multi-agency purchasing cooperative. All capitalized terms used without definition in this Agreement shall have the definitions ascribed to them in the Original Contract.

AGREEMENTS:

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the terms of the Original Contract as follows:

1. Reaffirmation of Original Contract. The Original Contract shall remain in full force and effect, and all terms and conditions of the Original Contract are hereby incorporated by reference into this Agreement, creating an agreement identical in terms between the Town and the Vendor. In the event of any conflict between this Agreement and the Original Contract, the terms of this Agreement shall prevail. In the Original Contract, the terms “City of Tempe” or “City” shall be deemed to be and refer to the Town, and the term “Contractor” shall be deemed to be and refer to the Vendor under this Agreement. The amount paid under this Agreement shall be in accordance with the Order Form attached hereto.

2. Counterparts. This Agreement 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 Agreement may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

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3. Compliance with Federal and State Laws.

3.1 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

3.2 Pursuant to the provisions of A.R.S. §41-4401, the Contractor warrants to the Town that the Contractor and all its subcontractors 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).

A breach of this warranty by the Contractor or any of its subcontractors will be deemed a material breach of this Contract and may subject the Contractor or subcontractor 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 Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

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

The Town will not consider the Contractor or any of its subcontractors in material breach of this Contract if the Contractor and its subcontractors 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 A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "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.

3.3 This Agreement is subject to cancellation for conflicts of interest pursuant to A.R.S. § 38-511.

3.4 Israel Boycott Provision. To the extent applicable Vendor 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.

4. All warranties, representations and indemnifications by Vendor shall survive the completion or termination of this Agreement.

5. The Vendor shall provide the Services described in Exhibit 1 attached hereto and incorporated herein. Unless expressly excluded, in writing, in the Agreement, the Services shall

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include any and all services reasonably contemplated, normally included, and necessary to complete the Services set forth in in Exhibit 1 in a good and workmanlike manner with due diligence and, at a minimum, in conformance with generally accepted industry standards and standard of care for like professionals in the same geographic area.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date set forth above.

Town of Queen Creek, an Arizona municipal corporation

Date: _____ By: _____ Mayor Gail Barney

By: _____
Town Manager John Kross

Attest: _____
Town Clerk Maria Gonzalez

Approved as to form:

By: _____
Dickinson Wright PLLC
Town Attorneys

Flock Group, Inc.

Date: 3/31/2022

By: _____

DocuSigned by:
Alex Latraverse
D7432021662B461...

Its: _____

Chief Revenue Officer



**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Customer**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY CUSTOMER AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Customer: AZ Queen Creek PD	Contact Name: Randy Brice
Address: 22358 South Ellsworth Road Queen Creek, Arizona 85142	Phone: (480) 358- 3340 E-Mail: randy.brice@queencreekaz.gov
Expected Payment Method:	Billing Contact: (if different than above)

Initial Term: 24.00 Renewal Term: 24 Months	Pilot period: First 30 days of Initial Term; option to cancel contract at no cost. Initial Term invoice due after Pilot period. Billing Term: Annual payment due Net 30 per terms and conditions
--	---

Name	Price	QTY	Subtotal
Professional Services - Falcon, Standard Implementation	\$350.00	15.00	\$5,250.00
Falcon Camera	\$2,500.00	15.00	\$37,500.00


(Includes one-time fees)

Year 1 Total: \$42,750.00
Recurring Total: \$37,500.00

Flock Group Inc. Order Form This proposal expires in 30 days.



By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc	Customer:
By:  <small>D7432021662B461...</small> Name: Alex Latraverse Title: Chief Revenue Officer Date: 3/31/2022	By: Name: Title: Date:

Flock Group Inc. Order Form This proposal expires in 30 days.



GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block of the order form (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, image, and recordings data of suspected vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

WHEREAS, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, Flock deletes all Footage on a rolling thirty (30) day basis, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“Purpose”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "**Agency Data**" will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. "**Agency Hardware**" shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term "**Agency Hardware**" excludes the Embedded Software

1.3 "**Authorized End User(s)**" shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement. 1.4 "**Documentation**" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 "**Embedded Software**" will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 "**Flock IP**" will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 "**Footage**" means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 "**Hardware**" or "**Flock Hardware**" shall mean the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term "**Hardware**" excludes the Embedded Software. 1.9

"**Implementation Fee(s)**" means the monetary fees associated with the Installation Services, as defined in Section 1.10 below.

1.10 "**Installation Services**" means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 "**Non-Agency End User(s)**" shall mean any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.12 "**Services**" or "**Flock Services**" means the provision, via the Web Interface, of Flock's software application for automatic license plate detection, searching image records, and sharing Footage.

1.13 "**Support Services**" shall mean Monitoring Services, as defined in Section 2.9 below. 1.14 "**Unit(s)**" shall

mean the Agency Hardware together with the Embedded Software. 1.15 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services. 1.16 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the order form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users. Warranties provided by said third party service providers are the agency’s sole and exclusive remedy and flock’s sole and exclusive liability with regard to such third-party services, including without limitation hosting the web interface. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

2.2 Embedded Software License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency’s in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

2.4 Usage Restrictions.

a. Flock IP. The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture (“**Permitted Purpose**”). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as

security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.

b. Flock Hardware. Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.4(b), all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

2.5 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

2.6 Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Hardware if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted.

2.7 Installation Services.

2.7.1 Designated Locations. For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Units (each Unit location so designated by Agency, a "**Designated Location**"). Flock shall have final discretion on location of Units. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. The deployment plan will confirm the Designated Location. After installation, any subsequent changes to the deployment plan ("**Reinstalls**") will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera

replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock Safety shall have full discretion on decision to reinstall Flock Hardware.

2.7.2 Agency Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although the Units are designed to utilize solar power, certain Designated Locations may require a reliable source of 120V AC power, as described in the deployment plan. In the event adequate solar exposure is not available Agency is solely responsible for providing a reliable source of 120V AC power to the Units, if necessary. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process of installation of cameras or AC power; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency (“**Agency Installation Obligations**”). In the event that a Designated Location for a Unit requires permits, Flock will provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Units from the temporary alternate location to the permitted location at no additional cost. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

2.7.3 Flock’s Obligations. Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock’s standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock’s obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

2.7.4 Security Interest. Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Hardware at Flock’s discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock’s rights to any damages Flock may sustain as a result of Agency’s default and Flock shall have the right to enforce any other legal remedy or right.

2.8 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock’s price for its services under this

Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

2.9 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations (“**Monitoring Services**”). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services (“**On Site Services**”) in-person or by email at support@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support.

2.10 Special Terms. From time to time, Flock may offer certain “Special Terms” related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency’s consent. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.10 Changes to Platform. Flock may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock’s products or services to its Agency s, (b) the competitive strength of, or market for, Flock’s products or services, (c) such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Agency Obligations. Flock will assist Agency end-users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person’s name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency’s use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA

4.1 Confidentiality. To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the “**Receiving Party**”) understands that the other Party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Flock includes non-public

information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units (“**Agency Data**”). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock’s use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency’s neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2 Agency Data. As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

4.3 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any

personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data input into the Services (the “**Aggregated Data**”). Agency hereby grants Flock a non exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein. Flock shall not sell Agency Data or Aggregated Data.

5. PAYMENT OF FEES

5.1a Wing Fees. For Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form attached hereto, together the “**Initial Fees**”) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card. **5.1b Falcon Fees.** For Falcon products during the Initial Term, Agency will pay Flock fifty percent (50%) of the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form attached hereto, together the “**Initial Fees**”) as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and Agency shall pay on or before 30th day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30th day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30th day following receipt of invoice.

5.2 Changes to Fees. Flock reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

5.3 Invoicing, Late Fees; Taxes. Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. If Agency is a non-tax exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

6. TERM AND TERMINATION

6.1a Wing Term. Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon execution of this Agreement. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form* (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”) *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.* **6.1b Falcon Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon first installation and

validation of a Unit. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the length set forth on the Order Form (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”) unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.2 Termination for Convenience. At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Flock Hardware. Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock’s own convenience, within a commercially reasonable period of time upon termination.

6.3 Termination. Notwithstanding the termination provisions in Section 2.4(b), in the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock’s material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

6.5 No-Fee Term. For the Term of this Agreement, Flock will provide Agency with complimentary access to ‘hot list’ alerts, which may include ‘hot tags’, stolen vehicles, Amber Alerts, etc. (“**No-Fee Term**”). In the event a Non Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User Unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days’ notice. Agency may terminate any No Fee Term or access to future No-Fee Terms upon thirty (30) days’ notice.

6.6 Survival. The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “**Defect**”), Agency must notify Flock’s technical support as described in Section 2.9 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Agency may request that Flock replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted.

Flock is under no obligation to replace or repair Hardware.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 if Agency is found to have misused the Flock Hardware, Agency Hardware or Embedded Software in any manner.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY 'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF GEORGIA. **7.5**

Insurance.Flock will maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of Flock's business risk. Certificates of Insurance can be provided upon request. **7.6 Force**

Majeure. Flock is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY,

AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF GEORGIA.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.5 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complimentary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock's suppliers.

8.4 Indemnity. Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of Section 3.2, a breach of this Agreement, Agency's Installation Obligations, Agency's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency's use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.2 or this Agreement.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to preserve the Agency Data, Flock will notify Agency of the requirement and applicable retention period, and Agency agrees to preserve and securely store this data on Flock's behalf so that should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 Assignment. This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

10.3 Entire Agreement. This Agreement, together with the Order Form(s), the then-current Reinstall Policy

(<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.4 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.5 Governing Law; Venue. This Agreement shall be governed by the laws of the State in which the Agency is located. The parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

10.6 Publicity. Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

10.7 Export. Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.8 Headings. The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.09 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.10 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.



EXHIBIT A

Statement of Work

Installation of Flock Camera on existing pole or Flock-supplied pole if required

Flock Group Inc. Order Form This proposal expires in 30 days.



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 ENGINEERING PLAN REVIEW SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH ENTELLUS, INC.; MICHAEL BAKER INTERNATIONAL, INC.; SUNRISE ENGINEERING INC.; WESTWOOD PROFESSIONAL SERVICES.

DATE: April 20, 2022

Suggested Action:

To approve one-year On-Call Professional Services Contracts for Engineering Plan Review Services, with up to four possible one-year renewals, with Entellus, Inc.; Michael Baker International, Inc.; Sunrise Engineering Inc.; Westwood Professional Services.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

The on-call list for Engineering Plan Review 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 December 20, 2021, the Town issued a (RFQ) No. 22-022 for On-Call Professional Services Contract for Engineering Plan Review Services. On February 2, 2022, staff received 8 proposals in response to the 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 Development Services Department. The Town recommends awarding contracts to the four 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 Engineering Plan Review 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 Contract for Engineering Plan Review Services](#)

ATTACHMENT 1

On-Call Professional Services Contracts
for Engineering Plan Review Services



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

**ON-CALL PROFESSIONAL ENGINEERING
PLAN REVIEW 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 April, 2022 (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 On-Call Engineering Plan Review 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 February 2, 2022; 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: Entellus, Inc.
Attn: Timothy Crall, Contract/Project Manager
3033 N. 44th Street, Suite 250
Phoenix, AZ 85018
tcrall@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:

Timothy D. Crall, Contract / Project Manager
Entellus, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Engineering Plan Review Services**

Firm Name: Entellus, Inc.

Entellus, Inc (Civil/Drainage/Survey Review)

Item	Classification / Title	Average Hourly Rate	Overhead (172%)	Net Fee (10%)	Total Hourly Rate
1	Principal/Project Manager/Sr Reviewer	\$75.00	\$129.00	\$20.40	\$224.40
2	Sr. Reviewer (PE/CFM)	\$65.00	\$111.80	\$17.68	\$194.48
3	Plan Reviewer : Sr. Engineer-In-Training (EIT)	\$40.00	\$68.80	\$10.88	\$119.68
4	Plan Reviewer :Engineer-In-Training (EIT)	\$35.00	\$60.20	\$9.52	\$104.72
5	Sr. Plan Reviewer - Survey (RLS)	\$60.00	\$103.20	\$16.32	\$179.52
6	Administrative Assistant	\$30.00	\$51.60	\$8.16	\$89.76
	Lokahi, LLC (Traffic Review)	Average Hourly Rate	Overhead (170%)	Net Fee (10%)	Total Hourly Rate
1	Principal	\$76.92	\$130.76	\$20.77	\$228.45
2	Project Manager	\$66.00	\$112.20	\$17.82	\$196.02
3	Project Engineer	\$60.00	\$102.00	\$16.20	\$178.20
4	Engineer	\$51.00	\$86.70	\$13.77	\$151.47
5	Engineer-In-Training (EIT)	\$36.00	\$61.20	\$9.72	\$106.92
6	Designer (CADD)	\$33.50	\$56.95	\$9.05	\$99.50
7	Technical/Drafter	\$32.00	\$54.40	\$8.64	\$95.04
8	Administrative Assistant	\$30.00	\$51.00	\$8.10	\$89.10

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$ NA

Color Copies \$ NA

Mileage \$0.58.5 (or as allowable standard rate is revised by the IRS)



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

**ON-CALL PROFESSIONAL ENGINEERING
PLAN REVIEW 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Michael Baker Internationals, 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 Engineering Plan Review 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 February 2, 2022; 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: Michael Baker International Inc.
Attn: Craig Wenger, Office Executive / Vice President
2929 N. Central Avenue, Suite 800
Phoenix, AZ 85012
cwenger@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:

Craig Wenger, Office Executive/Vice President
Michael Baker International, Inc..

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Engineering Plan Review Services**

Firm Name: Michael Baker International

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$80.67	147.93%	10%	\$220
2	Project Manager	\$73.34	147.93%	10%	\$200
3	Project Engineer	\$56.74	147.93%	10%	\$155
4	Engineer	\$51.36	147.93%	10%	\$140
5	Engineer-In-Training (EIT)	\$42.17	147.93%	10%	\$115
6	Designer (CADD)	\$44.00	147.93%	10%	\$120
7	Technical/Drafter	\$36.67	147.93%	10%	\$100
8	Administrative Assistant	\$33.00	147.93%	10%	\$90
9	Sr. Plan Reviewer	\$62.33	147.93%	10%	\$170
10					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies (8.5x11) \$0.06 per sheet

Photo Copies (11x17) \$0.11 per sheet

Color Copies (8.5x11) \$0.22 per sheet

Color Copies (11x17) \$0.44 per sheet

Mileage \$0.545/mile



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

**ON-CALL PROFESSIONAL ENGINEERING
PLAN REVIEW 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Sunrise 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 Engineering Plan Review 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 February 2, 2022; 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: Sunrise Engineering, Inc.
Geoffrey Child, Principal/Project Manager
2045 South vineyard, Suite 101
Mesa, Az 85210
gchild@sunrise-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:

Craig Wenger, Office Executive/Vice President
Michael Baker International, Inc..

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Engineering Plan Review Services**

Firm Name: Sunrise Engineering

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$75.20	172%	10%	\$225
2	Engineer V	\$65.17	172%	10%	\$195
3	Engineer IV	\$58.49	172%	10%	\$175
4	Engineer III	\$53.48	172%	10%	\$160
5	Engineer (E.I.T.) III	\$45.12	172%	10%	\$135
6	Engineer (E.I.T.) II	\$41.78	172%	10%	\$125
7	Engineer (E.I.T.) I	\$38.44	172%	10%	\$115
8	Project Manager II	\$58.49	172%	10%	\$175
9	Project Manager I	\$50.13	172%	10%	\$150
10	CAD Technician IV	\$38.44	172%	10%	\$115
11	CAD Technician III	\$35.09	172%	10%	\$105
12	CAD Technician II	\$31.75	172%	10%	\$95
13	CAD Technician I	\$28.41	172%	10%	\$85
14	Principal Surveyor	\$63.17	172%	10%	\$189
15	Registered Surveyor	\$56.48	172%	10%	\$169
16	Survey Manager	\$46.46	172%	10%	\$139
17	Survey Crew Chief	\$43.11	172%	10%	\$129
18	Survey CAD Tech	\$36.43	172%	10%	\$109
19	Survey Tech II	\$33.09	172%	10%	\$99
20	Survey Tech I	\$26.40	172%	10%	\$79
21	Administrative Assistant	\$21.72	172%	10%	\$65
22					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$ per outsourced invoice

Color Copies \$ per outsourced invoice

Mileage \$ 0.59/mile



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

**ON-CALL PROFESSIONAL ENGINEERING
PLAN REVIEW 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Westwood Professional 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 On-Call Engineering Plan Review 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 February 2, 2022; 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: Westwood Professional Services, Inc.
Jack Moody, Water Resources Service Leader
6909 E. Greenway Parkway, Suite 250
Phoenix, AZ 85254
Jack.moody@westwoodps.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:

Jerry Slater, vice President, West Region
Westwood Professional Services, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Engineering Plan Review Services**

Firm Name: Westwood Professional Services, Inc.

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$100.03	172%	25%	\$340.10
2	Service Leader	\$78.21	172%	25%	\$265.91
3	Project Manager	\$52.06	172%	25%	\$177.00
4	Project Engineer	\$48.55	172%	25%	\$165.07
5	Engineer-In-Training (EIT)	\$33.29	172%	25%	\$113.19
6	Administrative Assistant	\$24.75	172%	25%	\$84.15
7			172%	25%	\$0.00
8			172%	25%	\$0.00
9			172%	25%	\$0.00
10			172%	25%	\$0.00
11					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$ _____

Color Copies \$ _____

Mileage \$ _____



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 ENVIRONMENTAL & CULTURAL REVIEW SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH AZTEC ENGINEERING GROUP; LOGAN SIMPSON DESIGN, INC.; TERRACON CONSULTANTS, INC.; WESTERN TECHNOLOGIES, INC.

DATE: April 20, 2022

Suggested Action:

To approve a one-year On-Call Professional Services Contracts for Environmental & Cultural Review Services, with up to four possible one-year renewals, with AZTEC Engineering Group; Logan Simpson Design, Inc.; Terracon Consultants, Inc.; Western Technologies, Inc.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

The on-call list for Environmental and Cultural Review 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 December 20, 2021, the Town issued a (RFQ) No. 22-020 for On-Call Professional Services Contract for Environmental and Cultural Review Services. On February 2, 2022, staff received 5 proposals in response to the 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 and Public Works. 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 Environmental and Cultural Review 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 for Environmental & Cultural Review Services](#)

ATTACHMENT 1

On-Call Professional Services Contracts for
Environmental & Cultural Review Services



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

**ON-CALL PROFESSIONAL SERVICES
ENVIRONMENTAL & CULTURAL REVIEW
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and AZTEC Engineering 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 On-Call Environmental & Cultural Review 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 February 2, 2022;
7. Exhibit C - Negotiated Fee Schedule; and

- 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: Michael Shirley, Senior Vice President
AZTEC Engineering Group, Inc.
501 N. 44th Street, Suite 300
Phoenix, AZ 85008
480.215.0540
Email: mshirley@aztec.us

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:

Michael Shirley, Senior Vice President
AZTEC Engineering Group, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Price Schedule**

**On-Call Professional Services
On-Call Environmental & Cultural Review Services**

Firm Name: AZTEC Engineering Group, Inc.

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$ 104.85	161%	10%	\$301.01
2	Sr. Project Manager	\$ 101.80	161%	10%	\$292.27
3	Project Manager	\$ 63.83	161%	10%	\$183.25
4	Sr/ Environmental Planner/Tech Specialist	\$ 64.57	161%	10%	\$185.39
5	Environmental Planner/Tech Specialist	\$ 46.59	161%	10%	\$133.76
6	Associate Environmental Planner/Tech Specialist	\$ 30.40	161%	10%	\$87.28
7	Environmental Technican	\$ 23.24	161%	10%	\$66.72
8	Cultural Principal Investigator	\$ 63.02	161%	10%	\$180.93
9	Sr. Archaeologist	\$ 41.98	161%	10%	\$120.51
10	Archaeologist	\$ 30.29	161%	10%	\$86.96
11	Archaeologist Technician	\$ 22.58	161%	10%	\$64.83
12	Sr. Registered Landscape Architect	\$ 66.35	161%	10%	\$190.49
13	Landscape Architect	\$ 54.77	161%	10%	\$157.24
14	Sr. Engineer	\$ 85.60	161%	10%	\$245.76
15	Project Engineer	\$ 70.54	161%	10%	\$202.52
16	Engineer	\$ 55.20	161%	10%	\$158.47
17	Designer	\$ 44.26	161%	10%	\$127.07
18	Cadd Technician	\$ 36.75	161%	10%	\$105.51
19	Registered Land Surveyor	\$ 70.54	161%	10%	\$202.52
20	Survey Party Chief	\$ 38.24	161%	10%	\$109.77
21	Survey Technician	\$ 23.50	161%	10%	\$67.47
22					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization an shall be paid at actual cost.

Photo Copies \$ _____

Color Copies \$ _____

Mileage \$ _____ 0.585/mile



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

**ON-CALL PROFESSIONAL SERVICES
ENVIRONMENTAL & CULTURAL REVIEW
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Logan Simpson Design, 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 Environmental & Cultural Review 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 February 2, 2022;
7. Exhibit C - Negotiated Fee Schedule; and

- 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: Patricia McCabe, Project Principal
Logan Simpson Design, Inc.
51 West Third Street
Tempe, AZ 5281
pmccabe@logansimpson.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:

Logan Simpson Design, Inc.
Patricia McCabe, Principal

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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.



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

**ON-CALL PROFESSIONAL SERVICES
ENVIRONMENTAL & CULTURAL REVIEW
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Terracon 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 On-Call Environmental & Cultural Review 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 February 2, 2022;
7. Exhibit C - Negotiated Fee Schedule; and

- 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: Terracon Consultants, Inc.
Attn: Jennifer Thies, CEM, Environmental Dept, Manager
4685 S. Ash Avenue, Suite H-4
Tempe, AZ 85282

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:

Jennifer Thies, CEM
Terracon Consultants, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Price Schedule**

**On-Call Professional Services
On-Call Environmental & Cultural Review Services**

Firm Name: Terracon Consultants, Inc.

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$65.00	179%	10%	\$199.51
2	Project Manager	\$43.98	179%	10%	\$134.97
3	Senior Environmental Planner	\$56.44	179%	10%	\$173.21
4	Environmental Planner	\$40.00	179%	10%	\$122.76
5	Technician Drafter	\$24.80	179%	10%	\$76.11
6	Administrative Assistant	\$35.00	179%	10%	\$107.42
7	Department/Group Manager	\$53.24	179%	10%	\$163.39
8	Survey Manager				
9	Land Surveyor				
10	Survey Crew (2-man)				
11	Survey Crew (3-man)				
12	Assistant Scientist/Planner	\$34.19	179%	10%	\$104.93
13	Project Engineer	\$46.21	179%	10%	\$141.82
14	Field Technician	\$23.25	179%	10%	\$71.35
15	CADD Technician	\$24.00	179%	10%	\$73.66
16	Senior Project Manager	\$48.08	179%	10%	\$147.56
17	Environmental Scientist	\$31.93	179%	10%	\$97.99
18					
19					
20					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$ 1.00

Color Copies \$ 0.50

Mileage \$ 0.67



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

**ON-CALL PROFESSIONAL SERVICES
ENVIRONMENTAL & CULTURAL REVIEW
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Western Technologies, 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 Environmental & Cultural Review 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 February 2, 2022;
7. Exhibit C - Negotiated Fee Schedule; and

- 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: Western Technologies, Inc.
Attn: David Regonini, Director of Environmental Services
3737 E. Broadway Road
Phoenix, AZ 85040
David.r@wt-us.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:

David Regonini, Director of Environmental Services
Western Technologies, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Price Schedule**

**On-Call Professional Services
On-Call Environmental & Cultural Review Services**

Firm Name: Western Technologies, Inc.

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$52.17	56.68%	10%	\$147.30
2	Project Manager	\$49.76	56.68%	10%	\$140.50
3	Level IV, Engineer/Geologist	\$44.47	56.68%	10%	\$125.56
4	Level III, Environmental Professional	\$33.17	56.68%	10%	\$93.65
5	Level II, Environmental Professional	\$28.30	56.68%	10%	\$79.90
6	Level 1, Environmental Professional	\$24.88	56.68%	10%	\$70.25
7	Environmental Technician	\$21.00	56.68%	10%	\$59.29
8	CADD/Drafting	\$22.89	56.68%	10%	\$64.63
9	Administrative/Clerical	\$19.00	56.68%	10%	\$53.65

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies quoted

Color Copies quoted

Mileage \$1.00

Digitally signed by David Regonini
 DN: cn=David Regonini, o=Western
 Technologies Inc., ou=Environmental
 Services, email=david.r@wt-us.com,
 c=US
 Date: 2022.03.17 16:26:40 -07'00'



TOWN OF
QUEEN CREEK
ARIZONA

8.1

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 LANDSCAPE ARCHITECTURE SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH AZTEC ENGINEERING GROUP; DIG STUDIO; ENVIRONMENTAL PLANNING GROUP, LLC; GAVAN & BARKER, INC.; J2 ENGINEERING & ENVIRONMENTAL DESIGN. LLC; KIMLEY-HORN AND ASSOCIATES, INC.

DATE: April 20, 2022

Suggested Action:

To approve one-year On-Call Professional Services Contracts for Landscape Architecture Services, with up to four possible one-year renewals, with AZTEC Engineering Group; Dig Studio; Environmental Planning Group, LLC; Gavan & Barker, Inc.; J2 Engineering & Environmental Design. LLC; Kimley-Horn and Associates, Inc.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

The on-call list for Landscape Architecture 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 December 20, 2021, the Town issued a (RFQ) No. 22-023 for On-Call Professional Services Contract for Landscape Architecture Services. On February 2, 2022, staff received 11 proposals in response to the 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 and Communications Marketing and Recreation Department. The Town recommends awarding contracts

to the six 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 Landscape Architecture 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 for Landscape Architecture](#)

ATTACHMENT 1

On-Call Professional Services
Contracts for Landscape Architecture



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

**ON-CALL PROFESSIONAL LANDSCAPE
ARCHITECTURE 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and AZTEC Engineering 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 On-Call Landscape Architecture 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 February 2, 2022; 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: AZTEC Engineering Group, Inc.
Attn: Michael Shirley, Contract Principal, Senior Vice President
501 N. 44th Street, Suite 300
Phoenix, AZ 85008
mshirley@aztec.us

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:

Michael Shirley, Contract Principal/Senior Vice President
AZTEC Engineering Group, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Landscape Architecture Services
Firm Name: AZTEC Engineering Group**

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$ 104.85	161.01%	10%	\$301.04
2	Project Manager	\$ 74.08	161.01%	10%	\$212.69
3	Sr. Registered Landscape Architect (PLA)	\$ 66.35	161.01%	10%	\$190.50
4	Landscape Architect (PLA)	\$ 54.77	161.01%	10%	\$157.25
5	Sr. Project Engineer	\$ 85.60	161.01%	10%	\$245.77
6	Project Engineer	\$ 70.54	161.01%	10%	\$202.53
7	Engineer	\$ 55.20	161.01%	10%	\$158.49
8	Designer	\$ 44.26	161.01%	10%	\$127.08
9	CAD Technician	\$ 36.75	161.01%	10%	\$105.51
10	Registered Land Surveyor	\$ 70.54	161.01%	10%	\$202.53
11	Survey Party Chief	\$ 38.24	161.01%	10%	\$109.79
12	Survey Technician	\$ 23.50	161.01%	10%	\$67.47
13	Sr/ Environmental Planner/Tech Specialist	\$ 64.57	161.01%	10%	\$185.39
14	Environmental Planner/Tech Specialist	\$ 46.59	161.01%	10%	\$133.77
15	Cultural Principal Investigator	\$ 63.02	161.01%	10%	\$180.94
16	Sr. Archaeologist	\$ 41.98	161.01%	10%	\$120.53
17	Archaeologist	\$ 30.29	161.01%	10%	\$86.97
18					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$ _____

Color Copies \$ _____

Mileage \$0.585 / per mile _____



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

**ON-CALL PROFESSIONAL LANDSCAPE
ARCHITECTURE 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Dig Studio, 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 Landscape Architecture 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 February 2, 2022; 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: Dig Studio, Inc.
Attn: Jay Hicks, Senior Principal
600 N. 4th Street, Suite D
Phoenix, AZ 85004
jay@digstudio.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:

Jay Hicks, Senior Principal
Dig Studio, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT B

PROJECT SPECIFIC CONDITIONS (IF ANY)

DRAFT

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
Pricing Schedule**

**On-Call Professional Services
Landscape Architecture Services**

Firm Name: Dig Studio

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Sr. Principal	\$ 89.13	148.27%	10%	\$ 243.41
2	Principial	\$ 69.71	148.27%	10%	\$ 190.38
3	Sr. Landscape Architect/PM	\$ 48.31	148.27%	10%	\$ 131.93
4	Landscape Designer III	\$ 36.53	148.27%	10%	\$ 99.76
5	Landscape Designer II	\$ 32.93	148.27%	10%	\$ 89.93
6	Landscape Designer I	\$ 30.21	148.27%	10%	\$ 82.50
7	Intern	\$ 20.00	148.27%	10%	\$ 54.62
8	Administrative Assistant	\$ 34.90	148.27%	10%	\$ 95.31
9	Technical Writer	\$ 33.82	148.27%	10%	\$ 92.36
10					
11					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization an shall be paid at actual cost.

- 8.5x 11 Photo Copies B/W \$0.05
- 11x17 Photo Copies B/W \$ 0.10
- 8.5x 11 Photo Copies Color \$0.05
- 11x17 Photo Copies Color \$ 0.10
- BW Large Print Plots Sq Ft \$2.25
- Color Large Print Plots Sq Ft \$4.50
- Mileage \$ 58.5 (GSA Rate)



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

**ON-CALL PROFESSIONAL LANDSCAPE
ARCHITECTURE 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Environmental Planning Group, LLC a Delaware 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 On-Call Landscape Architecture 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 February 2, 2022; 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: David Harris, PLA, Principal
Environmental Planning Group, LLC
4685 S. Ash Avenue, Suite H-4
Tempe, AZ 85282

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:

David Harris, PLA, Principal
Environmental Planning Group, LLC

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Landscape Architecture Services**

Firm Name: Environmental Planning Group, LLC

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$67.31	185.17%	10.00%	\$211.14
2	Senior Landscape Architect II	\$62.50	185.17%	10.00%	\$196.05
3	Senior Landscape Architect I	\$48.08	185.17%	10.00%	\$150.82
4	Landscape Architect II	\$38.94	185.17%	10.00%	\$122.15
5	Landscape Architect I	\$36.25	185.17%	10.00%	\$113.71
6	Landscape Designer II	\$33.41	185.17%	10.00%	\$104.80
7	Landscape Designer I	\$23.80	185.17%	10.00%	\$74.66
8	Senior GIS Analyst	\$40.14	185.17%	10.00%	\$125.91
9	GIS Analyst	\$36.00	185.17%	10.00%	\$112.93
10	Administrative Assistant	\$26.20	185.17%	10.00%	\$82.19
11	Financial Analyst	\$33.65	185.17%	10.00%	\$105.56

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies, Inhouse: included in overhead

Color Copies, Inhouse: included in overhead

Mileage: \$0.585/mile



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

**ON-CALL PROFESSIONAL LANDSCAPE
ARCHITECTURE 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Gavan & Barker, 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 Landscape Architecture 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 February 2, 2022; 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: Gavan & Barker, Inc.
Attn: John Barker, Principal Landscape Architect
3030 North Central Avenue, Suite 700
Phoenix, AZ 85012
jbarker@gavanbarker.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 Barker, Principal Landscape Architect
Gavan & Barker, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Landscape Architecture Services**

Firm Name: Gavan & Barker

Item	Classification / Title	Average Hourly Rate	Overhead (145%)	Net Fee (10%)	Total Hourly Rate
1	Principal Civil Engineer	\$63.10	\$91.50	\$15.46	\$170.05
2	Principal Landscape Architect	\$58.05	\$84.17	\$14.22	\$156.44
3	Project Engineer	\$47.95	\$69.53	\$11.75	\$129.23
4	Designer - Senior	\$38.00	\$55.10	\$9.31	\$102.41

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$0 (inhouse copies included in overhead)

Color Copies \$0 (inhouse copies included in overhead)

Mileage \$0 (mileage included in overhead)

Direct Expenses for Outside Reproduction and Other Services shall be Billed at Actual Cost (No markup)



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

**ON-CALL PROFESSIONAL LANDSCAPE
ARCHITECTURE 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and J2 Engineering and Environmental Design 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 Landscape Architecture 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 February 2, 2022; 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: J2 Engineering and Environmental Design
Jeff Velasquez, PLA, ASLA, Contract Principal
4649 E. Cotton Gin Loop, Suite B2
Phoenix, Az 85040
jvelasquez@j2design.us

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:

Jeff Velasquez, PLA, ASLA, Contract Principal
J2 Engineering and Environmental Design

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT B

PROJECT SPECIFIC CONDITIONS (IF ANY)

DRAFT

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
Pricing Schedule**

**On-Call Professional Services
Landscape Architecture Services**

Firm Name: J2 Engineering & Environmental Design

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal / Manager	\$77.00	142.17%	10%	\$205.12
2	Senior Landscape Architect	\$71.00	142.17%	10%	\$189.13
3	Landscape Architect	\$49.69	142.17%	10%	\$132.36
4	Senior Designer	\$45.88	142.17%	10%	\$122.22
5	Designer	\$30.55	142.17%	10%	\$81.37
6	Administrative Assistant	\$27.13	142.17%	10%	\$72.26
7	Intern	\$17.00	142.17%	10%	\$45.29
	<i>as needed below:</i>				
8	Sr. Project Engineer	\$69.00	142.17%	10%	\$183.81
9	Project Engineer	\$51.50	142.17%	10%	\$137.19
10	Engineer	\$41.50	142.17%	10%	\$110.55

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$0 (included in J2 overhead)

Color Copies \$0 (included in J2 overhead)

Mileage \$0 (included in J2 overhead)



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

**ON-CALL PROFESSIONAL LANDSCAPE
ARCHITECTURE 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 April, 2022 (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 On-Call Landscape Architecture 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 February 2, 2022; 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: Kimley-Horn and Associates, Inc.
Attn: Brian Smalkoski, PE. Vice President
7740 N. 16th Street, Suite 300
Phoenix, AZ 85020
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, P.E., Vice President
Kimley-Horn and Associates, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT B

PROJECT SPECIFIC CONDITIONS (IF ANY)

DRAFT

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
Pricing Schedule**

**On-Call Professional Services
Landscape Architecture Services**

Firm Name: Kimley-Horn and Associates, Inc

The following is a format for the fee schedule. Please add more applicable job classifications as necessary:

Item	Classification / Title	Average Hourly Rate	Overhead (194.77%)	Net Fee (10%)	Total Hourly Rate
1	Senior Professional II	\$ 88.78	\$ 172.91	\$ 26.17	\$ 287.85
2	Senior Professional I	\$ 75.87	\$ 147.78	\$ 22.37	\$ 246.02
3	Professional	\$ 54.46	\$ 106.07	\$ 16.05	\$ 176.58
4	Landscape Architecture Analyst	\$ 41.18	\$ 80.20	\$ 12.14	\$ 133.51
5	Senior Designer	\$ 55.75	\$ 108.58	\$ 16.43	\$ 180.75
6	Technician / Drafter	\$ 39.46	\$ 76.86	\$ 11.63	\$ 127.96
7	Administrative Assistant	\$ 29.27	\$ 57.00	\$ 8.63	\$ 94.89



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 STORM WATER MANAGEMENT SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH ENTELLUS, INC.; EPS GROUP INC.; HILGARTWILSON LLC; J2 ENGINEERING & ENVIRONMENTAL DESIGN LLC; MICHAEL BAKER INTERNATIONAL, INC.

DATE: April 20, 2022

Suggested Action:

Staff recommends the approval of a one-year On-Call Professional Services Contracts for Storm Water Management Services, with up to four possible one-year renewals, with Entellus, Inc.; EPS Group Inc.; HilgartWilson LLC; J2 Engineering & Environmental Design LLC; Michael Baker International, Inc.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

The on-call list for Storm Water 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 December 20, 2021, the Town issued a (RFQ) No. 22-019 for On-Call Storm Water Management Services. On February 2, 2022, staff received 13 proposals in response to the 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 and Development Services. 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 Storm Water 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. [Storm Water Management Professional Services Contracts](#)

ATTACHMENT 1

On-Call Professional Services Contracts
for Storm Water Management Services



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

**ON-CALL PROFESSIONAL SERVICES
STORM WATER MANAGEMENT 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 April, 2022 (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 On-Call Professional Services for Storm Water 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 February 2, 2022;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: Entellus, Inc,
Attn: Bill Linck
3033 N. 44th Street, Suite 250
Phoenix, AZ 85018linck@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:

Entellus, Inc,
Bill Linck, Contract Manager

EXHIBIT A

PROJECT TASK ORDER FORM



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



Title _____

ATTEST:

Signature _____
Name _____
Title _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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 22-019 Contract Exhibit C
Pricing

On-Call Stormwater Management Services

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 (172%)	Net Fee (10%)	Total Hourly Rate
1	Project Principal	\$75.00	\$129.00	\$20.40	\$224.40
2	Sr. Project Manager	\$60.00	\$103.20	\$16.32	\$179.52
3	Sr. Project Engineer	\$47.00	\$80.84	\$12.78	\$140.62
4	Project Engineer	\$37.00	\$63.64	\$10.06	\$110.70
5	Sr. Engineer-In-Training (EIT)	\$40.00	\$68.80	\$10.88	\$119.68
6	Engineer-In-Training (EIT)	\$35.00	\$60.20	\$9.52	\$104.72
7	GIS Manager	\$50.00	\$86.00	\$13.60	\$149.60
8	GIS Analyst	\$32.00	\$55.04	\$8.70	\$95.74
9	GIS Tech	\$24.00	\$41.28	\$6.53	\$71.81
10	Construction Manager	\$52.00	\$89.44	\$14.14	\$155.58
11	Survey Manager	\$60.00	\$103.20	\$16.32	\$179.52
12	Surveyor (RLS)	\$37.00	\$63.64	\$10.06	\$110.70
13	2-Man Survey Crew	\$54.00	\$92.88	\$14.69	\$161.57
14	Designer	\$46.00	\$79.12	\$12.51	\$137.63
15	CAD	\$28.00	\$48.16	\$7.62	\$83.78
16	Administrative Assistant	\$30.00	\$51.60	\$8.16	\$89.76

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$ 0.05

Color Copies \$ 0.10

24" x 36" prints \$1.00

Vehicle & Equipment for Field Crew (per day) \$125.00

Vehicle Cost (per day) \$100.00

Mileage \$0.585 (or as allowable standard rate is revised by the IRS)



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

**ON-CALL PROFESSIONAL SERVICES
STORM WATER MANAGEMENT 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 April, 2022 (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 On-Call Professional Services for Storm Water 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 February 2, 2022; 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: EPS Group, Inc.
Attn: Elijah Williams
1130 N. Alma School Road, Suite 120
Mesa, Arizona 85201 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:

EPS Group, Inc.
Elijah Williams, Principal

EXHIBIT A

PROJECT TASK ORDER FORM



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



Title _____

ATTEST:

Signature _____

Name _____

Title _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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 22-019 Contract Exhibit C
Pricing

On-Call Stormwater Management Services

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	Net Fee (Profit)	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					
16					



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

**ON-CALL PROFESSIONAL SERVICES
STORM WATER MANAGEMENT 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and HILGARTWILSON, 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 On-Call Professional Services for Storm Water 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 February 2, 2022; 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: HilgartWilson, LLC
Attn: Aubrey Thomas
2141 E. Highland Avenue, #260
Phoenix, AZ 85016
AThomas@hilgartwilson.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:

HilgartWilson, LLC
Aubrey Thomas, Principal/Manger of Water Resources

EXHIBIT A

PROJECT TASK ORDER FORM



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



Title _____

ATTEST:

Signature _____

Name _____

Title _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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 22-019 Contract Exhibit C
Pricing

On-Call Stormwater Management Services

Firm Name: HILGARTWILSON

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

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee (Profit)
1	Principal	\$ 86.51	160%	10%
2	Department Manager	\$ 74.33	160%	10%
3	Project Manager	\$ 70.62	160%	10%
4	Project Engineer	\$ 56.91	160%	10%
5	Senior Project Designer	\$ 44.40	160%	10%
6	Engineer -in- Training	\$ 45.54	160%	10%
7	Designer (CAD/REVIT)	\$ 36.08	160%	10%
8	Technician Drafter	\$ 30.61	160%	10%
9	Project Coordinator	\$ 29.00	160%	10%
10	Administrative Assistant	\$ 24.49	160%	10%
11				

le of costs based

Total Hourly Rate	
\$	247.42
\$	212.58
\$	201.97
\$	162.76
\$	126.98
\$	130.24
\$	103.19
\$	87.54
\$	82.94
\$	70.04



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

**ON-CALL PROFESSIONAL SERVICES
STORM WATER MANAGEMENT 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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and J2 Engineering and Environmental Design, 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 On-Call Professional Services for Storm Water 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 February 2, 2022; 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: J2 Engineering & Environmental Design, LLC
Attn: Jason Touchin, PE, Contract Principal/QAQC
4649 E. Cotton Gin Loop, Suite B2
Phoenix, AZ 85040
jtouchin@j2design.us

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 Touchin, PE, Contract Principal/QAQC
J2 Engineering & Environmental Design , LLC

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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.



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

**ON-CALL PROFESSIONAL SERVICES
STORM WATER MANAGEMENT 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 April, 2022 (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 On-Call Professional Services for Storm Water 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 February 2, 2022; 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: Michael Baker International, Inc.
Attn: Craig Wenger, Office Executive/Vice President
2929 N. Central Avenue, Suite 800
Phoenix, AZ 85012
cwenger@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:

Craig Wenger, Office Executive/Vice President
Michael Baker International, Inc.

EXHIBIT A

PROJECT TASK ORDER FORM



EXHIBIT B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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 22-019 Contract Exhibit C
Pricing

On-Call Stormwater Management Services

Firm Name:

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	Net Fee (Profit)	Total Hourly Rate
1	Principal	\$80.67	147.93%	10%	220
2	Project Manager	\$77.74	147.93%	10%	212
3	Sr. Civil Engineer	\$62.33	147.93%	10%	170
4	Civil Engineer	\$51.36	147.93%	10%	140
5	Designer	\$44.00	147.93%	10%	120
6	GIS Analyst	\$42.17	147.93%	10%	115
7	CAD Technician	\$36.67	147.93%	10%	100
8					
9					
10					
11					
12					
13					
14					
15					
16					



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 SURVEY SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS, WITH BOWMAN CONSULTING GROUP LTD.; DIBBLE & ASSOCIATES CONSULTING ENGINEERS, INC.; SUNRISE ENGINEERING, INC.

DATE: April 20, 2022

Suggested Action:

To approve one-year On-Call Professional Services Contracts for Survey Services, with up to four possible one-year renewals, with Bowman Consulting Group Ltd.; Dibble & Associates Consulting Engineers, Inc.; Sunrise Engineering, Inc.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

The on-call list for Survey 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 December 20, 2021, the Town issued a (RFQ) No. 22-021 for On-Call Professional Services Contract for Survey Services. On February 2, 2022, staff received 7 proposals in response to the 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 and Development Services. The Town recommends awarding contracts to the three 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 Survey 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 for Survey Services](#)

ATTACHMENT 1

On-Call Professional Services
Contracts for Survey Services



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

**ON-CALL PROFESSIONAL SURVEY
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Bowman Consulting Group, Ltd, an Arizona limited 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 Survey 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 February 2, 2022;
7. Exhibit C - Negotiated Fee Schedule; and

- 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: Bowman Consulting Group, Ltd
Attn: Doug Toney, Principal/Survey Department Director
1600 N. Desert Drive, Suite 210
Tempe, AZ 85281

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:

Doug Toney, Principal/Survey Department Director
Bowman Consulting Group, Ltd

EXHIBIT A

PROJECT TASK ORDER FORM



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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



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
Pricing Schedule**

**On-Call Professional Services
Surveying Services**

Firm Name: Bowman Consulting Group

The following is a format for the fee schedule. Please add more applicable job classifications as necessary.

Item	Classification / Title	Average Hourly Rate	Overhead	Net Fee	Total Hourly Rate
1	Principal	\$87.50	160%	10%	\$250
2	Project Manager	\$57.75	160%	10%	\$165
3	Project Engineer	\$56.00	160%	10%	\$160
4	Engineer	\$47.25	160%	10%	\$135
5	Engineer-In-Training (EIT)	\$43.75	160%	10%	\$125
6	Designer (CADD)	\$47.25	160%	10%	\$135
7	Technical/Drafter	\$34.25	160%	10%	\$98
8	Administrative Assistant	\$29.75	160%	10%	\$85
9					
10	Survey Manager	\$57.75	160%	10%	\$165
11	Land Surveyor	\$52.50	160%	10%	\$150
12	Survey Crew (2-man)	\$56.00	160%	10%	\$160
13	Survey Crew (3-man)	\$68.25	160%	10%	\$195
14	Survey Crew (1-man)	\$45.50	160%	10%	\$130
15	UAV Operation	\$85.50	160%	10%	\$245
16	3D/UAV Modeling Technician	\$49.00	160%	10%	\$140
17					

REIMBURSABLE EXPENSES/TRAVEL EXPENSES

* Requires prior written authorization and shall be paid at actual cost.

Photo Copies \$0.35/sf, or \$0.23 for 8-1/2"x11" sheet

Color Copies \$0.50/sf, or \$0.32 for 8-1/2"x11" sheet

Mileage Cost + 15%



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

**ON-CALL PROFESSIONAL SURVEY
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Dibble & Associates Consulting Engineers, 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 Survey 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 February 2, 2022;
7. Exhibit C - Negotiated Fee Schedule; and

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: Dibble & Associates Consulting Engineers, Inc.
Attn: Kevin Roberts, PE, President
7878 N. 16th Street, Suite 300
Phoenix, AZ 85020

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 Roberts, PE, President
Dibble & Associates Consulting Engineers, 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**

**ON-CALL PROFESSIONAL SURVEY
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 April, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Sunrise 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 Survey 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 February 2, 2022; *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: Sunrise Engineering
Attn: Nick Johnson II, PLS, Survey Manager
2045 South Vineyard, Suite 101
Mesa, Arizona 85210
njohnson@sunrise-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:

Nick Johnson II, PLS, Survey Manager
Sunrise 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 B – 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 _____

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT A – SCOPE OF WORK AND PROJECT SCHEDULE

DRAFT



PROJECT TASK ORDER # 01

EXHIBIT B

PROJECT SPECIFIC CONDITIONS (IF ANY)

4820-2637-7466 v1 [53749-1]



TOWN OF
QUEEN CREEK
ARIZONA

8.L

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 1456-22 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 ASLD INFRASTRUCTURE IMPROVEMENTS (CIP PROJECT AR100) THAT WILL COVER THE AREA FROM GERMANN ROAD NORTH TO SR24 AND FROM MERIDIAN ROAD TO KENWORTHY ROAD, IN THE ARIZONA STATE LANDS PORTION OF THE TOWN IN AN AMOUNT NOT TO EXCEED \$2,000,000 AND THE NECESSARY BUDGET ADJUSTMENTS

DATE: April 20, 2022

Suggested Action:

To approve a Delegation Resolution 1456-22 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 ASLD Infrastructure Improvements (CIP project AR100) that will cover the area from Germann Road north to SR24 and from Meridian Road to Kenworthy Road, in the Arizona State Lands portion of the Town in an amount not to exceed \$2,000,000 and the necessary budget adjustments

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

The delegation resolution amount of \$2,000,000 includes funding to begin infrastructure construction improvements required to support the development of the Arizona State Lands. This action will be the first of many required to fully fund the construction activities for the delivery of this infrastructure. The funds included in this delegation resolution will be utilized to begin water and wastewater material procurements, complete clearing and grubbing activities and to select and begin pre-construction phase services with a Construction Manager at Risk for the project.

The proposed infrastructure improvements will include all water, wastewater and roadway improvements for:

- Germann Road: Meridian Road to Kenworthy Road
- Ironwood Road: Germann Road to Pecos Road
- Pecos Road: Ironwood Road to Kenworthy Road
- Kenworthy Road: Germann Road to Pecos Road
- Wastewater improvements within Pecos Road to Ironwood Road

Fiscal Impact:

The Town Council previously authorized \$4,648,181 in funding for project AR100 ASLD Infrastructure Improvements:

- March 2, 2022 - \$801,507 - engineering design costs from Stanley Consultants Inc. (under CIP project A2025-Meridian: Germann to Kenworthy that has since been renumbered and renamed to AR100).
- March 16, 2022 - \$2,795,206 - Engineering design services with TY Lin International
- April 6, 2022 - \$1,051,468 - Professional services with Marc Taylor, Inc. (under CIP project A2025-Meridian: Germann to Kenworthy that has since been renumbered and renamed to AR100)

Project AR100 ASLD Infrastructure Improvements is in the FY 2021/22 Budget, but does not currently have sufficient budget available to cover the proposed construction costs. A budget adjustment of \$2,000,000 from the FY 2021/22 CIP Contingency will be needed. The following table summarizes the budget adjustment required:

Project	Name	FY 2021/22 Current Budget	FY 2021/22 Budget Under Contract	Proposed Construction Cost	FY 2021/22 Available Budget	Contingency Required
AR100	ASLD Infrastructure Improvements	\$4,648,181	\$4,648,181	\$2,000,000	\$	\$2,000,000

This project is not growth-related, 100% of the water and wastewater portions of the project will be funded by utility rate revenue. The funding sources for the roads portion of the project have not yet been solidified. Likely it will be a combination of construction sales tax, impact fees and operating funds. The funding sources for the water and wastewater segments have also not been solidified, but may be a combination of non-growth utility rate revenue and growth related capacity fees.

Alternatives:

The Town Council may decide not to approve Resolution 1456-22. If the resolution is not approved, the Town will not be able to fulfill its obligations in supporting the development of Arizona State Lands.

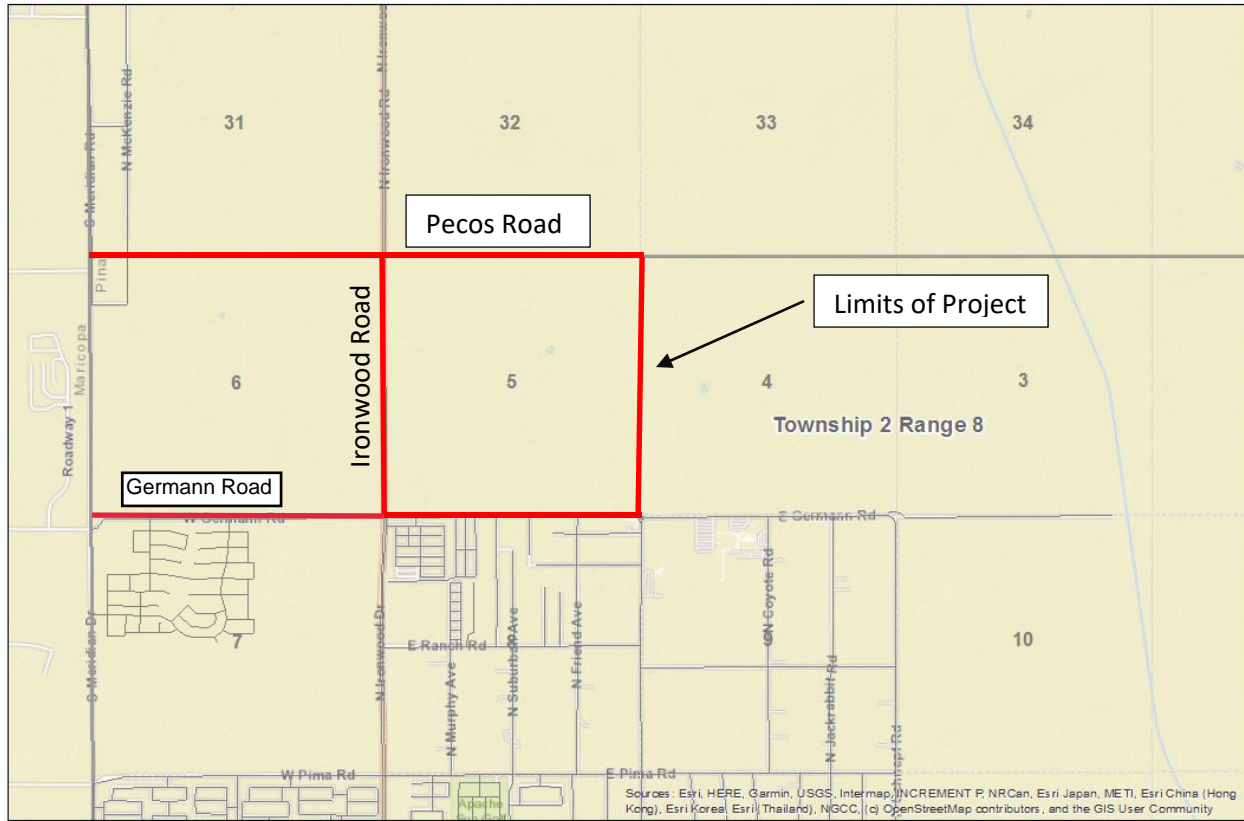
Attachment(s):

1. [Site Location Exhibit](#)
2. [Delegation Resolution 1456-22 ASLD Improvements](#)
3. [Delegation #1456-22 Exhibit 1](#)

SITE LOCATION MAP



Pinal County Assessor Parcel Viewer · Assessor Douglas J. Wolf



Pinal County Assessor's Office
PO Box 709
31 N Pinal St
Florence, AZ 85132
520.866.3351
assessor@pinalcountyaz.gov

Disclaimer: Pinal County does not guarantee that any information contained within this dataset or map is accurate, complete, or current. This data is for informational use only and does not constitute a legal document for the description of these properties. The Pinal County disclaims any responsibility or liability for any direct or indirect damages resulting from the use of this data. The boundaries depicted within this dataset or map are for illustrative purposes only. Users should independently research, investigate, and verify all information before relying on this map or using this map in the preparation of legal documents.

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

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 INFRASTRUCTURE IMPROVEMENTS REQUIRED TO SUPPORT THE DEVELOPMENT OF ARIZONA STATE LANDS IN AN AMOUNT NOT TO EXCEED \$2,000,000

WHEREAS, the Town Council finds that it is in the interest of the Town to enter into Contracts and/or Agreements to complete the infrastructure improvements required to support the development of Arizona State Lands (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 \$2,000,000.

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:

ATTESTED TO:

Gail Barney, Mayor

Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM

John Kross, Town Manager

Dickinson Wright PLLC
Town Attorneys

Delegation #1456-22

Exhibit 1

ASLD Infrastructure Improvements		Estimated Cost
Investigation & Design		
	Proposed Investigation and Design Subtotal:	
CONSTRUCTION	Materials Procurement	\$500,000
	CMAR Pre-Construction Phase Services	\$1,500,000
	Proposed Construction Subtotal	
Total Project Budget:		\$ 2,000,000



TOWN OF
QUEEN CREEK
ARIZONA

8.M

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: SCOTT HOLCOMB, TOWN ATTORNEY, KRIS BEECHER, TOWN ATTORNEY

RE: CONSIDERATION AND POSSIBLE APPROVAL OF ORDINANCE NO. 784-22, AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING AND CREATING CERTAIN SECTION OF CHAPTER 7 BUILDINGS AND BUILDING REGULATIONS AND AMENDING CHAPTER 9 OFFENSES; AND PROVIDE FOR CONSISTENCY AND PROPER COORDINATION BETWEEN AMENDED CHAPTERS OF THE TOWN CODE, AND BETWEEN THE IMPACTED TOWN DEPARTMENTS AND THE POLICE DEPARTMENT; PROVIDING FOR PENALTIES AND PERMIT PROCESSES; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES.

DATE: April 20, 2022

Suggested Action:

To approve and ratify Ordinance No. 784-22, an ordinance of the Mayor and Council of the Town of Queen Creek, Arizona, amending and creating certain Sections of Chapter 7 Buildings and Building Regulations and amending Chapter 9 Offenses; and provide for consistency and proper coordination between amended Chapters of the Town Code, and between the impacted Town departments and the police department; providing for penalties and permit processes; and providing for repeal of conflicting ordinances.

Relevant Council Goal(s):

- Effective Government
- Safe Community

Discussion:

Prior to the Town establishing its own police department ("QCPD"), revisions to the Town Code were made to organize Chapter 9 Offenses into a manner that allowed QCPD and Code enforcement to easy navigation when reviewing the Code to enforce the law. This required certain Sections of the Chapter 9 to be moved out of that Chapter to other more appropriate Chapters. In that revision, a construction permitting process for nighttime and holiday construction and the authorization for the revocation of that permit were removed from Chapter 9 with the intention of moving that portion of the code to Chapter 7 Buildings and Building Regulations. A scrivener's error removed those certain Chapter 9 sections of the Code, but inadvertently failed to reassign them to Chapter 7.

In an effort to fix the scrivener's error and reestablish the previously existing code, the Ordinance

now correctly places the construction permitting process for nighttime and holiday construction and the authorization for the revocation of such permits in Chapter 7. Further, in consultation with QCPD and Development Services Divisions, Chapter 7 and Chapter 9 have been revised to include clarifications and improvements to the permitting process, requirements for the mitigation plans, and other issues not adequately addressed in the previous version of the Code. These revisions are also informed by recent experiences with the construction of an apartment complex and wholesale club within the Town of Queen Creek.

As set forth in the attached Ordinance, the following changes to the current Town Code are recommended:

Chapter 7 Buildings and Building Regulations.

Chapter 7 was edited to include language that was inadvertently removed from Chapter 9 but never placed into Chapter 7. Additional edits were made to outline specific details of the construction permitting process and the revocation of those permits.

Chapter 9 Offenses.

Chapter 9 was edited to properly reflect and integrate with the permitting process reincorporated into the revised Chapter 7.

Fiscal Impact:

None.

Alternatives:

No alternatives are recommended at this time.

The Council could choose to not adopt the Code revisions or could direct further modifications.

Attachment(s):

2. [Ordinance No. 784-22.pdf](#)

ORDINANCE NO. 784-22

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING AND CREATING CERTAIN SECTIONS OF CHAPTER 7 BUILDINGS AND BUILDING REGULATIONS AND AMENDING CHAPTER 9 OFFENSES; AND PROVIDE FOR CONSISTENCY AND PROPER COORDINATION BETWEEN AMENDED CHAPTERS OF THE TOWN CODE, AND BETWEEN THE IMPACTED TOWN DEPARTMENTS AND THE POLICE DEPARTMENT; PROVIDING FOR PENALTIES AND PERMIT PROCESSES; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the Town of Queen Creek (“Town”) and its residents, and

WHEREAS, the Town has established the Queen Creek Police Department (“QCPD”) to protect, enhance and promote the health, safety and welfare of the Town and its residents, and

WHEREAS, A.R.S. § 9-240, *et seq.*, authorizes the Town Council to regulate the functions of the Town, and

WHEREAS, the revisions to the Code adopted September 15, 2021 inadvertently omitted a preexisting construction permit process,

WHEREAS, the Code revisions set forth in this Ordinance provide for appropriate penalties for violations and enforcement of the Code provisions set forth in this Ordinance, and

WHEREAS, the Mayor and Council have determined that the revisions to the Town Code set forth in this Ordinance should take effect on April 20, 2022.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Queen Creek as follows:

Section 1. The Queen Creek Town Code, Arizona Chapter 7 Buildings and Building Regulations is amended and Section 7.1.4.10 is created as set forth below in this Ordinance.

7.1.4.10 Nighttime and Holiday Construction Permit (“NHCP”). Construction work may be conducted at different times than otherwise allowed in Section 9-3-3 of the Town Code only if, upon written application, a permit to perform nighttime/holiday construction (“NHCP”) is obtained from the Development Services Department, Building Safety Division. The form and contents of the application, permit and any supporting documentation required for issuance of a permit shall be established by, and as determined necessary by, the Building Official.

7.1.4.10.1 Application for a NHCP. An application for a NHCP will be submitted to the Development Services Department, Building Safety Division at the same time as the application for the required permits under 7.1.4.1, or if no building permit is required prior to commencing any construction activity. The application shall be in the form and supported by such documentation as the required by the Building Official, and shall include, at a minimum:

1. A complete schedule showing the specific dates with start and end times nighttime/holiday work is proposed to be performed;
2. A detailed description of the work to be performed on each date (delineating times when specific activities will be performed);
3. The type, size and amount of equipment, including vehicles (*i.e.*, concrete and delivery vehicles), to be used on each specific date;
4. A detailed sound and light mitigation plan;
5. A detailed traffic mitigation plan, if required; and
6. A detailed plan for providing notice to the surrounding neighborhood including who will receive notice, and the methods, substance and times when notice will be provided, and a 24-hour contact for complaints.

7.1.4.10.2 Issuance of a NHCP. No NHCP will be issued until a completed application has been formally submitted to and approved by the Building Official. In granting a NHCP, the Building Official shall, as the Building Official determines is appropriate for the specific location and type of work involved, consider whether:

1. Construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of the different population levels or different neighborhood activities;
2. Obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during the daytime;
3. The kind of work to be performed emits noises and/or light at such a low level as to not cause significant disturbance of the reasonable peaceful enjoyment of the surrounding neighbors in the vicinity of the work site;
4. The neighborhood of the proposed work site is primarily residential in character wherein sleep would be disturbed;
5. Undue economic hardship to the applicant or other undue hardship to the neighborhood the work site is located in would occur if the work were spread over a longer time period;

6. The work will abate or prevent hazard to life or property;
7. The proposed early morning or night work is in the general public interest;
8. The effectiveness of the sound and light mitigation plan;
9. The effectiveness of the traffic mitigation plan, if required;
10. The effectiveness of the plan for providing notice to the neighborhood;
11. The applicant's prior record of compliance with Town Codes and requirements; and
12. Any other factors the Building Official determines are relevant support or preclude the issuance of the requested permit.

7.1.4.10.3 Single and Multiple Projects. A NHCP may be obtained for a single project, or for multiple projects under construction, by the same applicant, within 600 feet, approximately two blocks, of each other.

7.1.4.10.4 NHCP Requirements. In the NHCP, the Building Official shall prescribe such conditions, working times, types of construction equipment to be used, sound and light mitigation, traffic mitigation, notice requirements, and other conditions as the Building Official deems appropriate in the public interest for the construction work and project at the location nighttime/holiday construction activities are to occur. The current approved NHCP shall be available for inspection at the work site at all times.

7.1.4.10.5 Emergencies. A NHCP shall not be required to perform emergency work necessary to restore property to a safe condition following a public calamity, work required to protect the health, safety or welfare of persons or property, or work by private or public utilities when restoring utility service.

7.1.4.10.6 Amendment of NHCP. The Applicant shall strictly comply with the requirements of the NHCP. If at any time the applicant determines that a NHCP requires amendment for any reason, the applicant shall submit to the Building Official an application to amend the NHCP, and shall continue to comply with the terms of the NHCP in place until an amendment is granted by the Building Official in writing.

7.1.4.10.7 Revocation of Permits; Appeals. The Building Official may revoke any NHCP granted hereunder upon complaints based upon evidence acceptable to the Building Official that the applicant has not strictly complied with the terms of the then current NHCP and/or the construction work causes significant undue disturbance of the reasonable peaceful enjoyment of the surrounding neighbors in the vicinity of the work site. Any person aggrieved by the granting or the refusal to grant a NHCP by the Building Official may appeal the decision to the Director of Development Services. Appeals of the Director's decisions may be made to the Town Manager, whose determination shall be final.

Section 2. The Queen Creek Town Code, Arizona Chapter 9 Offenses, is amended as set forth below (additions in Underline, removals in ~~Strikethrough~~) in this Ordinance and incorporated in full herein as part of this Ordinance.

9-3-3 Noise Regulations During Nighttime and Holiday Construction

It is unlawful during the times hereinafter set forth, to conduct construction activities of any kind, including but not limited to ~~the making of an excavation~~, clearing of surface land and delivery of equipment or supplies, or the operation of any tools, generators, vehicles and or equipment of any kind ~~mechanically powered tools~~ anywhere in the Town limits, when such activities result in the generation of loud, unreasonable, or excessive noise in violation of this Section or Section 9-6-4 below, or without complying with Section 7-1-4-10 of the Town Code.

- A. Start/stop time periods of construction. Above mentioned construction activities are prohibited during the following time periods, unless a Nighttime and Holiday Construction ~~Permit~~ (“NHCP”) is obtained as ~~described~~ required under ~~in subsection Section 7-1-4-10 of the Town Code~~ is section:
 - 1. Prior to 5:00 am and after 7:00 pm Monday through Friday from May 15 through September 15.
 - 2. Prior to 6:00 am and after 7:00 pm Monday through Friday during the remainder of the year.
 - 3. Prior to 7:00 am and after 5:00 pm on Saturdays throughout the year.
 - 4. At all times on Sundays and Legal Holidays as defined by the Town.
- B. Stop orders. Whenever any work on a construction project is in violation of the provisions of this section, an Authorized Enforcement Agent may order the construction project stopped by notice in writing served on any persons responsible for the project, and any such persons shall forthwith stop work on the project until a permit is obtained. Failure to obey a stop order is a separate violation.
- C. Exclusions. The following activities shall be excluded from such prohibition:
 - 1. Noise generated by work being performed by a resident of a residential building or structure may continue until 10:00 pm but may not begin earlier than the times set forth in subsection ~~B~~ A of this section.
 - 2. Noise resulting from emergencies, including but not limited to, repair of roofs, windows, doors, electrical, plumbing and mechanical (HVAC) shall be permitted whenever necessary. An emergency shall be defined as any situation where work must be performed in order to prevent serious injury to persons or property.
 - 3. ~~Noise generated by sod delivery equipment, and vehicles.~~
 - 4. ~~Loading/unloading construction material, such as lumber, tile, and similar materials.~~
 - 5. ~~Pre construction termite pre treatment.~~
- D. Violation of this Section or an issued NHCP is a Civil Offense and Section 9-6-10 shall apply to Repeat Violators as set forth therein.

...

9-6-4 Nighttime Noise

It is unlawful for any person or entity to cause or allow loud, unreasonable, or excessive noise to emit from real or personal property that the person or entity owns or controls, regardless of the instrument, device, or source of the noise, between the hours of 10:00 p.m. and 6:00 a.m., unless issued and operating in compliance with a Nighttime and Holiday Construction Permit (“NHCP”) by the Town in accordance with Section 7-1-4-10, or having met an exclusion or timeframe in accordance with Section 9-3-3 of the Town Code. Violation of this Section is a Civil Offense and Section 9-6-10 shall apply to Repeat Violators as set forth therein.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance or any part of the Queen Creek Town Code adopted herein are hereby repealed, effective as of the effective date of this Ordinance.

Section 4. 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 this 20th day of April 2022.

FOR TOWN OF QUEEN CREEK:

ATTESTED TO:

Gail Barney, Mayor

Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

John Kross, ICMA-CM
Town Manager
4891-9803-1643 v3 [53749-44]

Dickinson Wright PLLC
Town Attorneys



TOWN OF
QUEEN CREEK
 ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, ERIK SWANSON, PLANNING ADMINISTRATOR, MALLORY RESS, PLANNER I

RE: PUBLIC HEARING FOR CASE P21-0168 MAYBERRY ON RITTENHOUSE ANNEXATION, A PROPOSED ANNEXATION OF APPROXIMATELY 1.42 ACRES, EAST OF THE SOUTHEAST CORNER OF SOSSAMAN AND RITTENHOUSE ROADS.

DATE: April 20, 2022

Suggested Action:

This is a Public Hearing no Action is required.

Relevant Council Goal(s):

Effective Government

Discussion:

SUMMARY

This proposal consists of a request by Sean Lake of Pew and Lake, applicant working on behalf of the property owner, for annexation of approximately 1.42 acres located east of the southeast corner of Sossaman and Rittenhouse roads.

DISCUSSION

In spring of 2021, the applicant (representing the applicant of the proposed annexation area) held discussions with the Town regarding potential annexation of the site. The applicant discussed a development proposal for a total 16.76 acre site (gross), of which 1.42 acres are within Maricopa County and subject to this annexation. The development proposed for the site is a 186 unit residential condominium. In August 2021, the applicant submitted an annexation application for the proposed parcel concurrently with a PAD rezone (Mayberry on Rittenhouse Rezone P21-0169). At that time, the applicant also submitted an application for the Preliminary Plat (Mayberry on Rittenhouse Pre-plat P21-0179) and Site Plan (Mayberry on Rittenhouse Site Plan (P21-0171).

The subject site is currently part of one single-family parcel. There are structures on the property including a home, however, the portion of the property that is the subject of this application is vacant. The parcel in the annexation area is currently zoned RU-43 (Maricopa County). As a note, the remainder of the proposed development site is zoned R1-43 and was annexed into the Town under Ordinance 197-01, with an effective date of April 7, 2001 and Ordinance 703-19, with an effective date of August 18, 2019.

The proposed annexation area has been in the Town’s Planning Area since 1996. The Planning Area identifies areas located outside of the Town’s jurisdictional boundaries that may be annexed within the Town in future years. The current General Plan designates the subject site as Neighborhood, which allows for a range of residential densities (up to 20 du/acre).

This is the first required public hearing for the requested annexation. The second hearing date has yet to be determined, however it is anticipated that the second hearing will be scheduled on the same agenda as the proposed PAD Rezone and Site Plan requests for the Mayberry on Rittenhouse development.

A Pre-Annexation Development Agreement will not be provided as part of this request.

ANNEXATION TIMELINE

Below is a timeline of the major steps associated with the annexation application. The items in italics have been completed:

Steps	Date	Tasks
Step 1	January 27, 2022	Request property owner and assessed valuation information from Maricopa County Assessor and Arizona Department of Revenue.
Step 2	Mar. 28, 2022	Record blank petition, map, and legal description with Maricopa County Assessor. The 30-day waiting period begins.
Step 3	April 11, 2022	Post the Property for the Public Hearing.
Step 4	April 9, 2022	Prepare legal advertisements and publish notice of Public Hearing in the newspaper.
Step 5	April 11, 2022	Mail notice of public hearing to property owners and the Chairman and Clerk of the County Board of Supervisors.
Step 6	Apr. 20, 2022	Public Hearing at the Town Council Meeting to discuss the annexation proposal.
Step 7	Apr. 27, 2022	30-day waiting period ends. The process to collect signatures may begin.
Step 8	TBD	Adopt Ordinance at a future Town Council Meeting.
Step 9	30 days later	Record Ordinance and signed petitions.

Attachment(s):

1. [1. Aerial Map.pdf](#)
2. [2. General Plan Map.pdf](#)
3. [3. Current Zoning Map.pdf](#)
4. [4. Annexation Petition and Legal Description.pdf](#)

Project Name: Mayberry on Rittenhouse Aerial Map

Case Number: P21-0168

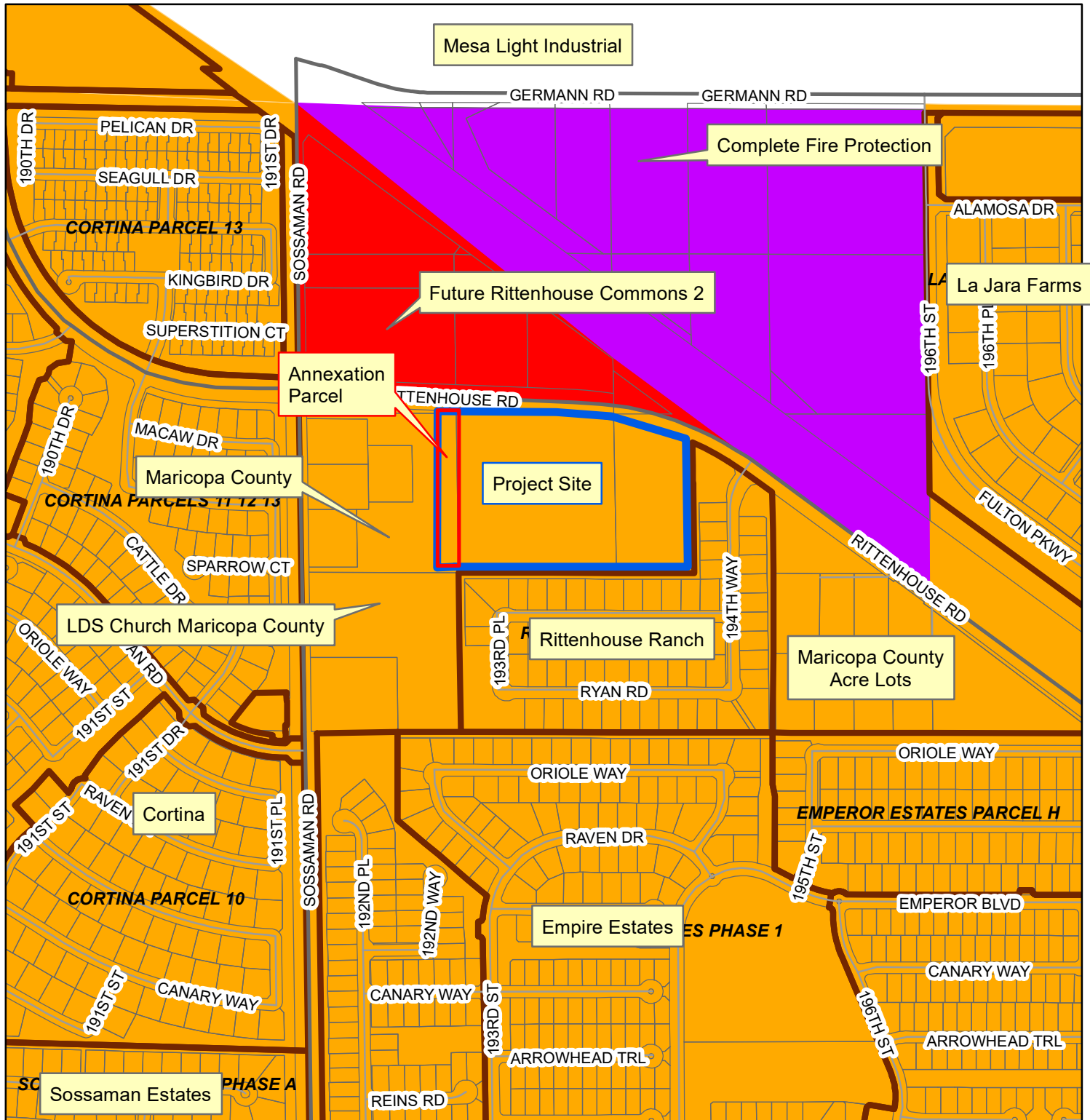
Hearing Date: April 20, 2022



Project Name: Mayberry on Rittenhouse Annexation General Plan Exhibit

Case Number: P21-0168

Hearing Date: April 20, 2022



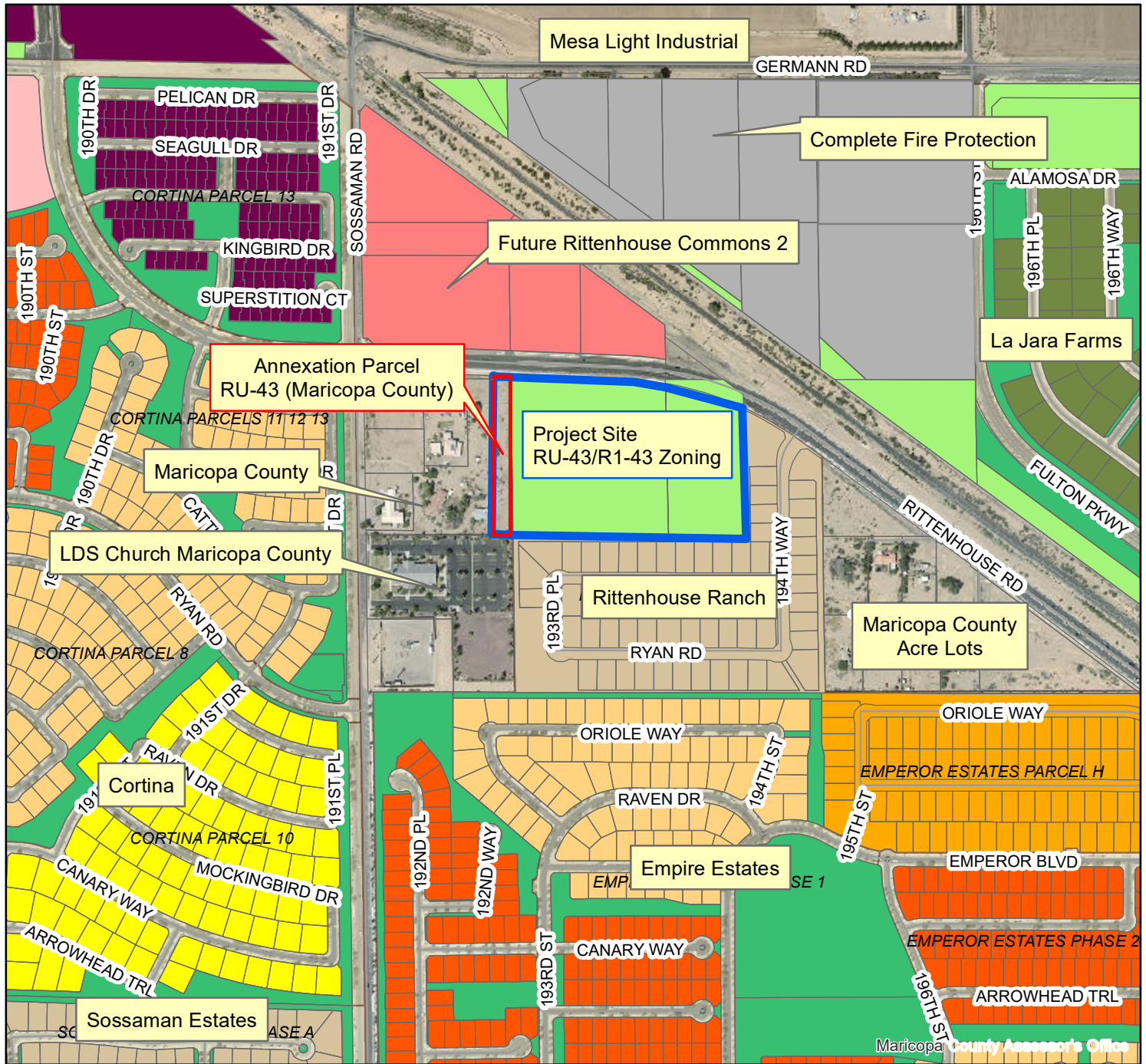
General Plan Land Use

- | | | | |
|--|--|--|--|
| Rural | Commercial | Special District 1 | Special District 4 |
| Neighborhood | Industrial | Special District 2 | |
| Urban | Open Space | Special District 3 | |

Project Name: Mayberry on Rittenhouse Annexation Existing Zoning Exhibit

Case Number: P21-0168

Hearing Date: April 20, 2022



Zoning Districts

RC - Recreation/Conservation	PQP - Public/Quasi-Public	R1-8 - Residential	R1-54 - Residential
C-1 - Commercial	HDR - Residential	R1-9 - Residential	R1-190 - Residential
C-2 - Commercial	MDR - Residential	R1-12 - Residential	PCD - Planned Community
C-3 - Commercial	R1-4 - Residential	R1-15 - Residential	AT - Agritainment
TC - Commercial	R1-5 - Residential	R1-18 - Residential	SP - Special District
EMP A - Office/Industrial Park	R1-6 - Residential	R1-35 - Residential	
EMP B - General Industrial	R1-7 - Residential	R1-43 - Residential	

ANNEXATION PETITION-ANNEXATION NO. P21-0168

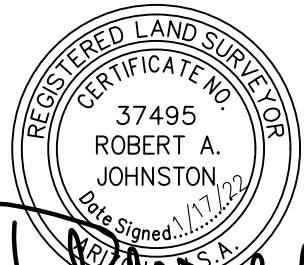
TO THE HONORABLE MAYOR & COUNCIL OF THE TOWN OF QUEEN CREEK,
ARIZONA:

We the undersigned, the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the Town of Queen Creek in the event of annexation within the territory being contiguous to the corporate limits of the Town of Queen Creek, with the exterior boundaries of the territory proposed to be annexed shown on the map attached hereto, marked Exhibit "A" and made a part hereof, request the Town of Queen Creek to annex the following described territory, provided that the requirements of Section 9-471, Arizona Revised Statutes, and amendments thereto are fully observed.

The descriptions of the territory proposed to be annexed, not already within the present limits of the Town of Queen Creek and located in Maricopa County, Arizona, are attached hereto, marked Exhibit "B" and made a part hereof.

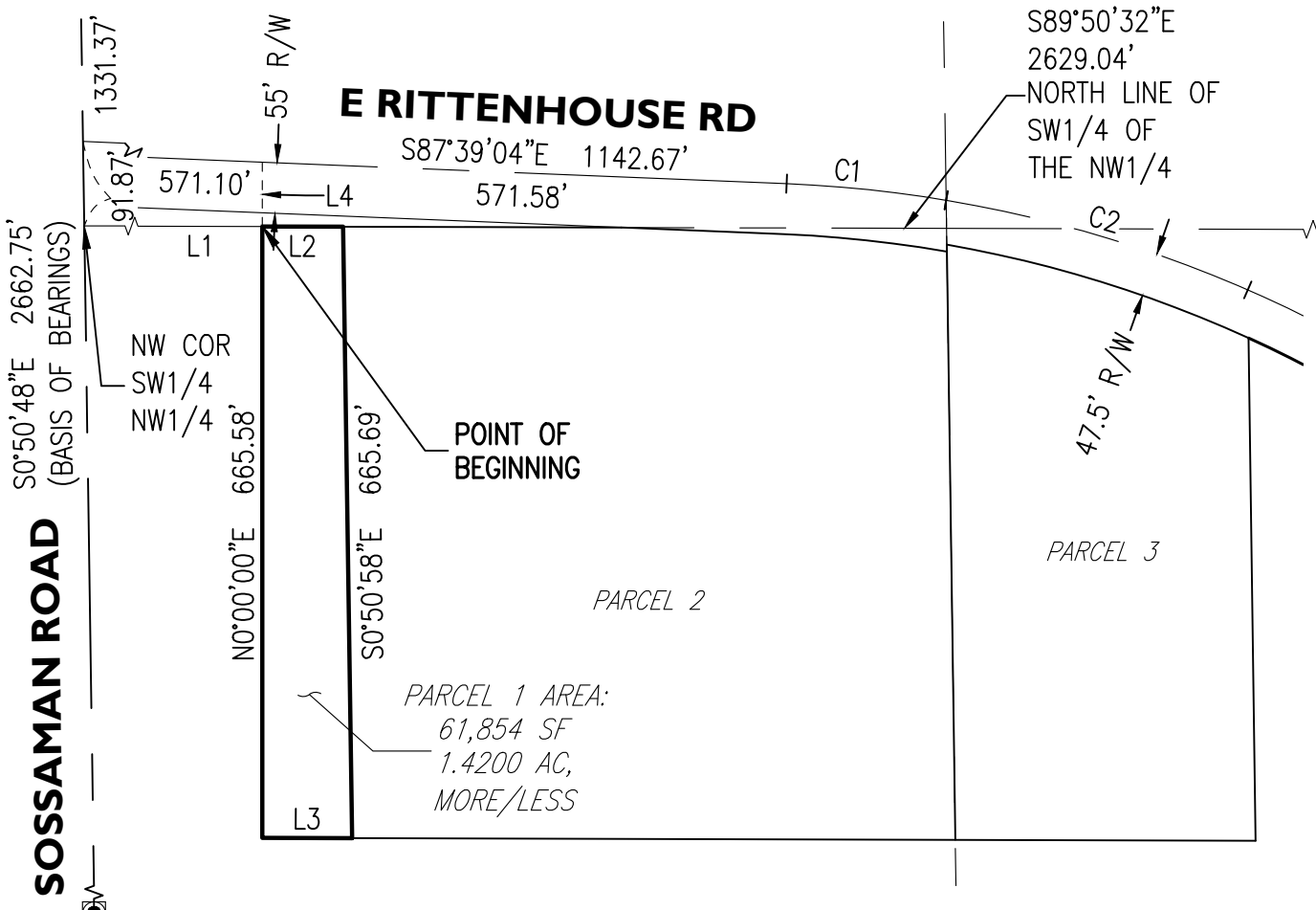
DATE	SIGNATURE	MAILING ADDRESS	ASSESSOR'S PARCEL NUMBER

EXHIBIT "A"



Robert A. Johnston

POINT OF COMMENCEMENT
NW CORNER SEC. 8, T2S, R7E,
GILA & SALT RIVER MERIDIAN



PARCEL 1 AREA:
61,854 SF
1.4200 AC,
MORE/LESS

W1/4 CORNER SEC. 8, T2S, R7E,
GILA & SALT RIVER MERIDIAN

NOTE. THIS LEGAL DESCRIPTION DOES NOT
REFLECT A FIELD SURVEY PERFORMED
BY THIS SURVEYOR, AND IS FOR EXHIBIT
PURPOSES ONLY AND NOTHING ELSE.



Jan 17, 2022 3:14pm S:\Projects\2021\21-0069\Land Survey\Legals\Parcel1\21-0069 Ex_Prc1.dwg

SHEET 1 OF 2

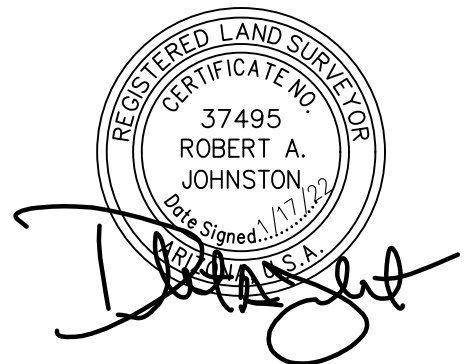
21-0069	PD RITTENHOUSE - PARCEL 1	<p>1130 N. Alma School Rd. Ste. 120 Mesa, AZ 85201 T:480.503.2250 F:480.503.2258 www.epsgroupinc.com</p>
	EXHIBIT A	

EXHIBIT "A"

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	174.77'	1400.00'	7°09'09"	174.65'	N84°04'25"W
C2	343.61'	1400.00'	14°03'44"	342.75'	N73°27'58"W

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°50'32"E	569.26'
L2	S89°50'32"E	88.00'
L3	N89°50'17"W	97.87'
L4	N00°00'00"E	70.02'

NOTE. THIS LEGAL DESCRIPTION DOES NOT REFLECT A FIELD SURVEY PERFORMED BY THIS SURVEYOR, AND IS FOR EXHIBIT PURPOSES ONLY AND NOTHING ELSE.



Jan 17, 2022 3:14pm S:\Projects\2021\21-0069\Land Survey\Legals\Parcel1\21-0069 Ex_Prc1.dwg

SHEET 2 OF 2

21-0069

PD RITTENHOUSE - PARCEL 1

EXHIBIT A



1130 N. Alma School Rd.
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com



EXHIBIT "B"
PARCEL 1 - PD RITTENHOUSE
LEGAL DESCRIPTIONS

Job No. 21-0069

January 17, 2022

A PORTION OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 8 FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 8 BEARS SOUTH 0 DEGREES 50 MINUTES 48 SECONDS EAST, 2662.75 FEET;

THENCE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, SOUTH 0 DEGREES 50 MINUTES 48 SECONDS EAST, 1331.37 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID NORTHWEST QUARTER;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8, SOUTH 89 DEGREES 50 MINUTES 32 SECONDS EAST, 569.26 FEET TO THE **POINT OF BEGINNING**;

THENCE, CONTINUING ALONG SAID NORTH LINE SOUTH 89 DEGREES 50 MINUTES 32 SECONDS EAST, 88.00 FEET;

THENCE, DEPARTING SAID NORTH LINE SOUTH 0 DEGREES 50 MINUTES 58 SECONDS EAST, 665.69 FEET;

THENCE, DEPARTING SAID LINE NORTH 89 DEGREES 50 MINUTES 17 SECONDS WEST, 97.87 FEET;

THENCE, DEPARTING SAID LINE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 665.58 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8 AND THE **POINT OF BEGINNING**.

CONTAINS 61,854 SQUARE FEET OR 1.4200 ACRES, MORE OR LESS AND BEING SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RIGHTS-OF-WAY OF RECORD OR OTHERWISE.

THIS LEGAL DESCRIPTION DOES NOT REFLECT A FIELD SURVEY PERFORMED BY THIS SURVEYOR, AND IS FOR EXHIBIT PURPOSES ONLY AND NOTHING ELSE.





TOWN OF
QUEEN CREEK
ARIZONA

12.A

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: SCOTT MCCARTY, FINANCE DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION 1454-22 AUTHORIZING THE REFINANCING AND REDEMPTION OF A 2008 WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (“WIFA”); DRINKING WATER LOAN AND ACCELERATING THE REFINANCING AND REDEMPTION OF THE LOAN BY DECLARING AN EMERGENCY DUE TO THE TIMING OF THE MARKET AND TO BENEFIT FROM A POSITIVE NET PRESENT VALUE SAVINGS OVER THE LIFE OF THE LOAN.

DATE: April 20, 2022

Suggested Action:

To approve Resolution 1454-22 as presented.

NOTE: Without an emergency clause, resolution takes effect 30 days after approval and could negatively impact the savings due to the current market and would delay the closing of the proposed new WIFA Loans. The resolution requires six affirmative votes to pass with the emergency clause.

Relevant Council Goal(s):

- Effective Government: KRA Financial Management, Financial Sustainability
- Superior Infrastructure - Capital Improvement Program

Discussion:

The Town uses long-term debt as a mechanism to equalize the costs of needed improvements to both present and future residents / utility customers. The Town’s adopted financial and debt management policies provides comprehensive guidelines for the issuance and management of all financings to ensure debt is issued both prudently and cost effectively. Town staff continually monitors opportunities to refund debt and recommend such refunding as appropriate.

In 2008, the Town obtained a \$40M WIFA DW Loan No. 920132-08 the “2008 WIFA Loan” for the acquisition of the Queen Creek Water Company. The 2008 WIFA Loan had an original 20-year term with an interest rate of 4.038%. In 2014, to meet strategic financial objectives, the 2008 WIFA Loan was amended to take advantage of a longer available amortization period allowing the Town to

extend the final payment of the outstanding loan by 10 years. The original interest rate and call date were not changed through the 2014 amendment. The current balance of the 2008 WIFA Loan is approximately \$21M and the final payment date is 2038. The 2008 WIFA Loan is callable on or after March 12, 2022.

Refinancing the 2008 WIFA Loan

Town staff, in consultation with the Financial Advisor (Wedbush Securities Inc.), developed a refunding strategy for the 2008 WIFA Loan. Depending on market conditions, the refunding is expected to provide a positive net present value savings over the remaining life of the debt. Town staff is recommending bank direct placement of approximately \$21M, as WIFA financing cannot be used to refinance an existing WIFA loan. Working in conjunction with Town staff, the Town's Financial Advisor will attempt to secure proposals from banks through a Request for Funding ("RFF"). A copy of the RFF is provided with this staff report as an attachment. The Town will choose a lender based on the proposal that provides the most favorable terms to the Town. The Town reserves the right to negotiate terms and provisions with respondents and reserves the right to reject any or all responses to the RFF in the event that a minimum net present value savings of \$1M cannot be achieved. Given the current status of economic markets, the cost savings from this proposed refunding is volatile and a possibility exists that the minimum savings is not achieved. If that is the case, the Town will not move forward with the refunding until conditions exist such that at least the \$1M savings is achieved.

At this time, the Town Council is being asked to approve the documents necessary to attempt the refinancing and redemption of the 2008 WIFA Loan including:

1. The Authorizing Resolution. The Resolution authorizes the issuance of the Obligations with certain established parameters and delegates the authority to finalize the specifics to the Town Manager and Finance Director/Chief Financial Officer. The Resolution includes an emergency declaration to accelerate the refinancing and redemption of the loan due to the timing of the market.
2. The form of the Senior Lien Utility System Revenue Purchase Agreement and the form of Senior Lien Utility System Revenue Obligation Indenture. These forms provide, among other things, the security for the Obligations, and for the execution and delivery thereof.

The Town's Special Counsel (Greenberg Traurig, LLP) prepared the associated Resolution and legal documents. Upon approval of these documents, no further Town Council action is required. To meet the notice requirements in the 2008 WIFA Loan documents, Town staff submitted a letter to WIFA (attached) requesting early redemption of the 2008 WIFA Loan.

Following Town Council approval, staff anticipates selecting a bank and agreeing to terms in April 2022. The transaction is tentatively scheduled to close May 11, 2022. Again, given the volatility of the economic markets, if accelerating this schedule is advantageous to the Town, we will do so.

New WIFA Loans \$56 Million

Additionally, in order to proceed with the 2008 WIFA loan redemption, WIFA requires the loan balance be replaced by a new WIFA loan. On March 3, 2021, staff made a presentation to the Town Council regarding the need to acquire financing for the construction of water and sewer infrastructure over the next three years due to the tremendous growth each system is experiencing.

At the time, it was estimated \$130M would be needed to maintain the existing level of service for current customers and provide the infrastructure needed for new development. During the March 3, 2021 meeting, Town Council approved Resolution 1401-21 authorizing WIFA loans in an amount not to exceed \$70M.

In March 2022, staff submitted WIFA Drinking Water and Clean Water (wastewater) loan applications for projects totaling \$56M, including \$46M for water and \$10M for wastewater infrastructure. The estimated interest rate for the new WIFA Loans is 2.5% (compared to 3.5% open-market transaction) and the estimated interest savings is \$12M.

WIFA board approval of the loans is scheduled for April 14, 2022. Staff anticipates bringing the new loan documents to Town Council for approval on May 4, 2022. Completing the new loan on the calendar proposed is being done so to avoid potentially costly new federal procurement requirements associated with WIFA loans, which go into effect May 14, 2022. Finally, prior to June 30, 2022, staff anticipates bringing a reimbursement resolution for infrastructure associated with the WIFA loans to Town Council for approval, closing transactions and reporting final terms.

Fiscal Impact:

Refinancing the 2008 WIFA Loan:

Bank direct purchase of approximately \$21M is recommended to refinance the 2008 WIFA Loan. The estimated interest rate is 3% or less and provides an estimated minimum net present value savings of \$1M. The cost of the issuance is estimated at \$200,000.

The repayment pledge will be through a senior lien utility system net revenues.

Alternatives:

None. The refinancing and refunding of the 2008 WIFA Loan will provide a positive net present value savings. If this savings is not achieved, we will not proceed with the refunding.

Attachment(s):

1. [Letter to WIFA dated April 6, 2022 requesting early redemption of the 2008 WIFA Drinking Water Loan No. 920132-08](#)
2. [Resolution 1454-22 authorizing the refinancing and redemption of a 2008 Water Infrastructure Finance Authority of Arizona Drinking Water Loan](#)
3. [Form of Series 2022 Senior Lien Utility System Revenue Purchase Agreement](#)
4. [Form of Series 2022 Senior Lien Revenue Obligation Indenture](#)
5. [Senior Lien Utility System Revenue Refunding Obligations, Series 2022 Request for Funding.pdf](#)



TOWN OF
QUEEN CREEK
ARIZONA

April 6, 2022

Mr. Daniel Dialessi
Executive Director
Water Infrastructure Finance Authority of Arizona
100 North 7th Ave., Suite 130
Phoenix, AZ 85007

REVISED LETTER

Via E-Mail

Re: Early redemption of the 2008 WIFA Drinking Water Loan No. 920132-08
(the "2008 WIFA DW Loan") Callable March 12, 2022.

Dear Mr. Dialessi:

A Resolution authorizing the refinancing and redemption of the above referenced 2008 WIFA DW Loan is expected to be passed by the Town Council on April 20, 2022.

Please accept this letter as conditional notification of the Town of Queen Creek's intent to redeem all of its 2008 WIFA DW Loan with principal outstanding in the amount of \$20,971,558.90. Queen Creek would like to complete the redemption on or about May 11, 2022.

Please work directly with Dan Olsen, Queen Creek at (480) 358-3171, Jim Stricklin, Wedbush Securities at (480) 778-8594, and Paul Gales, Greenberg Traurig at (602) 445-8404 to confirm the amount of outstanding principal and accrued interest through the redemption date and to arrange for the wire transfer of funds.

Thank you again for your continued assistance with the Town's efforts to meet its current and future water and wastewater needs.

Sincerely,

A handwritten signature in black ink that reads "Scott McCarty".

Scott McCarty
Finance Director
Town of Queen Creek

cc: Paul Gales, Greenberg Traurig LLP.
Jim Stricklin, Wedbush Securities Inc.
Dan Olsen, Deputy Finance Director, Town of Queen Creek

RESOLUTION NO. 1454-22

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT AND AN OBLIGATION INDENTURE, AS WELL AS AGREEMENTS WITH A FINANCIAL ADVISOR AND SPECIAL COUNSEL; APPROVING THE SALE AND EXECUTION AND DELIVERY OF SENIOR LIEN UTILITY SYSTEM REVENUE REFUNDING OBLIGATIONS, SERIES 2022, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN SUCH PURCHASE AGREEMENT; DELEGATING THE DETERMINATION OF CERTAIN TERMS OF SUCH OBLIGATIONS AND MATTERS RELATED THERETO TO THE MANAGER AND CHIEF FINANCIAL OFFICER OF THE TOWN; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, the Town of Queen Creek, Arizona (the “Town”) has entered into a Loan Agreement, dated as of March 27, 2008 (the amount of such loan agreement to be prepaid as provided herein is referred to herein as the “Loan Being Prepaid”), with the Water Infrastructure Finance Authority of Arizona to finance the acquisition of a portion of the water and sewer utility system of the Town and the costs of improvements thereto (collectively, the “Projects”); and

WHEREAS, the Mayor and Council of the Town have now determined that it will be beneficial to its citizens to refinance all or a portion of the Loan Being Prepaid; and

WHEREAS, therefore, the Mayor and Council of the Town have determined to cause the execution and delivery of a Series 2022 Senior Lien Utility System Revenue Purchase Agreement, to be dated as of the first day of the month of the dated date of the hereinafter described Series 2022 Obligations (the “Purchase Agreement”), in substantially the form presented at the meeting at which this Resolution was adopted, by which the Town will agree to purchase the portion of the Projects which have not been paid to date; and

WHEREAS, refinancing the costs of the Projects will be accomplished through the sale and execution and delivery of certain proportionate interests (the “Series 2022 Obligations”) in the Purchase Agreement pursuant to, and secured by, a Series 2022 Senior Lien Utility System Revenue Obligation Indenture, to be dated as of the date of the Purchase Agreement (the “Indenture”), from the Town to a trustee to be determined as provided herein (including any successor appointed and acting in such capacity, the “Trustee”), in substantially the form presented at the meeting at which this Resolution was adopted, the Series 2022 Obligations to be designated “Senior Lien Utility System Revenue Refunding Obligations, Series 2022”; and

WHEREAS, there have been presented to the Mayor and Council of the Town at the meeting at which this Resolution is being adopted the proposed forms of: (1) the Purchase Agreement; and (2) the Indenture; and

WHEREAS, the Town has the requisite power and authority to execute and deliver the Purchase Agreement and to cause the sale and execution and delivery of the Series 2022 Obligations, and all acts, conditions and things required by the Constitution and laws of the State of Arizona and the requirements of the Town to happen, exist and be performed precedent to and as a condition to the adoption of this Resolution have happened, exist and been performed in the time and manner required to make the Purchase Agreement a valid and binding limited, special obligation of the Town;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, THAT:

Section 1. (a) For the purpose of providing funds to refinance the costs of the Projects that have not been paid to date and the related costs of the sale and execution and delivery of the Series 2022 Obligations, the Series 2022 Obligations shall be sold and executed and delivered. The Series 2022 Obligations shall be dated the date of their initial authentication and delivery, shall be executed and delivered in such form and denominations, shall be payable as to interest and principal on such dates, shall be executed in such manner and shall have such other provisions, including, without limitation, provisions with respect to redemption prior to maturity, as set forth in the form of the Indenture, with such additions, deletions and modifications consistent with this Resolution as shall be approved by the officers of the Trustee executing and delivering the same on behalf of the Trustee, the execution and delivery thereof to constitute conclusive evidence of their approval and of such additions, deletions or modifications. The identity of the Trustee, the aggregate principal amount of the Series 2022 Obligations (but not to exceed \$23,000,000), the period over which the Series 2022 Obligations shall mature (including provisions for redemption), the exercise of prepayment provisions with respect to the Loan Being Prepaid; the date on, entity to which and price at which the Series 2022 Obligations shall be sold (including provisions for any discount or premium), and the rates of interest the Series 2022 Obligations shall bear and the dates such interest shall be payable shall be determined by the Manager and the Chief Financial Officer of the Town or the designees of either of them (collectively, the “Authorized Representatives”) to which such authority is hereby delegated; provided, however, that the foregoing determinations must result in a present value debt service savings net of all costs, of five percent of the principal amount of the Loan Being Prepaid.

(b) The Mayor or, in the absence thereof, the Vice Mayor are hereby authorized to execute, and the Clerk is hereby authorized to attest and deliver, respectively, the Purchase Agreement and the Indenture, as well as, if necessary, an Escrow Trust Agreement, to be dated as of the first day of the month of the dated date of the Series 2022 Obligations (the “Escrow Trust Agreement”), with the Trustee, in its separate capacity as escrow trustee (the “Escrow Trustee”), for the establishment of an escrow to defease the Loan Being Prepaid, in a standard form, all of which are hereby approved, with such additions, deletions and modifications as shall be approved by those officers executing and delivering the same on behalf of the Town, the execution and delivery thereof to constitute conclusive evidence of their approval, and of such additions,

deletions and modifications.

(c) The Trustee is hereby requested to execute and deliver the Series 2022 Obligations, the Purchase Agreement and the Indenture, and the Escrow Trustee is hereby requested to execute and deliver, if necessary, the Escrow Trust Agreement.

(d) The Authorized Representatives are hereby authorized to cause the sale and execution and delivery of the Series 2022 Obligations and are hereby delegated the authority to complete any information missing in, or necessary for the consummation of the transactions contemplated by, the Purchase Agreement and the Indenture. The Authorized Representatives are hereby further authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any credit enhancement, including those making provision for the repayment of amounts advanced for credit enhancement thereunder. The fees, costs and expenses with respect to the foregoing shall be paid from proceeds of the sale of the Series 2022 Obligations or any other legally available moneys. The Chief Financial Officer of the Town is hereby authorized to receive and expend such funds as necessary to accomplish the purposes of this Resolution, including payment of installment payments related to debt service on the Series 2022 Obligations.

(e) Subject to the direction delegated by paragraph (a) of this Section, the proposal of the purchaser determined as provided in such paragraph may be accepted. The Series 2022 Obligations shall be prepared and executed and delivered following the adoption of this Resolution and shall thereupon be delivered to such purchaser upon payment therefor in accordance with the terms of the Indenture.

Section 2. After any of the Series 2022 Obligations are delivered by the Trustee to the purchaser thereof upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Series 2022 Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

Section 3. The Authorized Representatives and the other officers of the Town, on behalf of the Town, are each hereby authorized and directed, without further order of the Mayor and Council of the Town, to do all such things and to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the Town, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated hereby, including, specifically but not by way of limitation, agreements with Wedbush Securities Inc. and Greenberg Traurig, LLP to act as financial advisor and special counsel, respectively, with respect to the execution and delivery of the Series 2022 Obligations.

Section 4. All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the sale and execution and delivery of the Series 2022 Obligations as contemplated by this Resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved.

Section 5. If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 6. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately sell the Obligations to secure the best, available economic terms therefor, and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the Mayor and Council of the Town and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona. If this Resolution is not approved by the affirmative vote of three-fourths of all the members of the Mayor and Council of the Town and also approved by the Mayor of the Town, the foregoing declaration of an emergency shall be inoperative, and this Resolution shall not become operative until thirty days after its passage.

PASSED AND ADOPTED by the Mayor and Council of the Town of Queen Creek, Arizona, this 20th day of April 2022.

.....
Mayor

ATTEST:

.....
Town Clerk

APPROVED AS TO FORM:

.....
Town Attorney

SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE PURCHASE AGREEMENT

**THE TOWN OF QUEEN CREEK, ARIZONA,
AS PURCHASER**

AND

AS SELLER

DATED AS OF MAY 1, 2022

The rights of _____, in its separate capacity as seller hereunder, have been assigned to _____, in its separate capacity as trustee, under a Series 2022 Senior Lien Utility System Revenue Obligation Indenture, dated as of May 1, 2022

(This Table of Contents is for informational purposes only
and is not to be considered a part of this Purchase Agreement)

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SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE PURCHASE AGREEMENT

THIS SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE PURCHASE AGREEMENT, dated as of May 1, 2022 (this “*Purchase Agreement*”), by and between _____, a national banking association, authorized to exercise trust powers in the State of Arizona, as trustee but in its separate capacity as seller (the “*Seller*”), and THE TOWN OF QUEEN CREEK, ARIZONA, a municipal corporation of the State of Arizona, as purchaser (the “*Town*”),

WITNESSETH:

WHEREAS, pursuant to Resolution No. 1454-22 adopted by the Mayor and Council of the Town on April 20, 2022, it was found and determined to be advantageous and in the public interest that the Series 2022 Obligations (as defined herein) be sold and executed and delivered; and

WHEREAS, pursuant to this Purchase Agreement, the Town has agreed to purchase the Projects (as defined herein) from the Seller;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

The words and terms used herein shall have the respective meanings assigned to them in the hereinafter defined Indenture. Otherwise, the following words and terms as used herein shall have the meaning indicated unless the context or use requires a different meaning or intent. All accounting terms not otherwise so defined shall have the meanings assigned to them in accordance with generally accepted accounting principles.

“*Additional Parity Obligations*” means any additional obligations having a lien payable from Net Revenues on a parity with the Loan Agreements and this Purchase Agreement which may hereafter be incurred by the Town (or any financing conduit acting on behalf of the Town) in compliance with the terms of the Loan Agreements and this Purchase Agreement.

“*Administrative Expenses*” means the reasonable cost or value of all services rendered by the Town and its various departments with respect to the System.

“*Consultant*” means a firm of utility consultants experienced in the financing and operation of utility systems and having a recognized reputation for such work.

“*Fiscal Year*” means the 12-month period used by the Town for its general accounting purposes as the same may be changed from time to time, said Fiscal Year currently extending from July 1 to June 30.

“*Indenture*” means the Series 2022 Senior Lien Utility System Revenue Obligation Indenture, dated as of May 1, 2022, by and between the Trustee and the Town, as supplemented from time to time.

“*Loan Agreements*” means the Loan Agreements, dated as of November 1, 2013 (Loan No. 920243-14), as of June 24, 2020 (Loan No. 920304-20), as of June 24, 2020 (Loan No. 910184-20), as of September 25, 2020 (Loan No. 920310-21), and as of December 3, 2021 (Loan No. 920339-22), each by and between the Town and WIFA.

“*Loan Being Prepaid*” means the Loan Agreement, dated as of March 27, 2008, by and between the Town and WIFA.

“*Net Revenues*” means that portion of the Revenues remaining after deducting sufficient funds for the Operation and Maintenance Expenses.

“*Operation and Maintenance Expenses*” means all costs reasonably incurred in connection with the operation, use and maintenance of the System, including (i) repairs necessary to keep the System in efficient and economical operating condition, (ii) the payments of premiums for insurance hereinafter required to be carried on the System, (iii) payments of reasonable Administrative Expenses, and (iv) generally all expenses of the System except depreciation and interest expense related to the Senior Parity Obligations and any obligations subordinate to such obligations and payments required to be made by the Town pursuant to Section 3.3(iv) hereof or similar provisions with respect to any documents authorizing Additional Parity Obligations for deposit into the Debt Service Reserve Account or a debt service reserve account with respect to Additional Parity Obligations.

“*Projects*” means, collectively, the portion of the System acquired with proceeds of the Loan Being Prepaid and the improvements to the System financed with proceeds of the Loan Being Prepaid.

“*Purchase Event of Default*” means one of the events defined as such in Section 7.1.

“*Purchase Price*” means the sum of the payments paid pursuant to Subsections 5.4(i) and (ii) of the Indenture from amounts to be paid by or on behalf of the Town as the purchase price for the Projects.

“*Regulations*” means sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

“*Repair and Replacement Fund*” means the fund of that name created pursuant to Section 5.2.

“*Repair and Replacement Fund Funding Requirement*” means an amount equal to twenty percent of the annual debt service payments due with respect to the Series 2022 Obligations.

“*Revenues*” means and includes all income, moneys and receipts to be received by the Town, directly or indirectly, from the ownership, use or operation of the System including any waste material or by-products of the System, and also including investment income.

“*Senior Parity Obligations*” means, collectively, the Loan Agreements, this Purchase Agreement and Additional Parity Obligations.

“*Series 2022 Obligations*” means the Town of Queen Creek, Arizona Senior Lien Utility System Revenue Refunding Obligations, Series 2022.

“*System*” means and includes all of the properties, facilities, and associated equipment comprising the complete sewer and waterworks plant and system owned by the Town, whether lying within or without the boundaries of the Town, as now existing and as they may hereafter be improved or extended, all improvements, additions and extensions thereto or replacements thereof hereafter constructed or acquired by purchase, contract or otherwise and all contracts, rights, agreements, leases and franchises of every nature owned by the Town and used or useful or held for use in the operation of said plant and system or any part or portion thereof.

“*Tax Certificate*” means the Certificate Relating To Federal Tax Matters, dated May 11, 2022, delivered by the Town with respect to the Series 2022 Obligations.

“*WIFA*” means the Water Infrastructure Finance Authority of Arizona.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; references to an “Article” or a “Section” are to those of this Purchase Agreement; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Purchase Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Purchase Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise. The captions and headings in this Purchase Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II EXECUTION AND DELIVERY OF SERIES 2022 OBLIGATIONS; FEDERAL TAX LAW COVENANTS

Section 2.1 Agreement to Cause Execution and Delivery of Series 2022 Obligations. In exchange for the Projects, the Series 2022 Obligations were executed and delivered pursuant to the Indenture.

Section 2.2 General Federal Tax Covenants.

(a) As provided in further detail in the Tax Certificate, the Town shall not make or direct the making of any investment or other use of the proceeds of any of the Series 2022 Obligations or the Projects which would cause such Series 2022 Obligations to be “arbitrage

bonds” as that term is defined in section 148 of the Code or “private activity bonds” as that term is defined in section 141 of the Code and shall comply with the requirements of such sections of the Code and the related Regulations throughout the term of the Series 2022 Obligations. Particularly, the Town shall be the owner of the Projects for federal income tax purposes. The Town shall not enter into (i) any management or service contract with any entity other than a governmental entity for the operation of any portion of the Projects unless the management or service contract complies with the requirements of such authority as may control at the time, or (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Projects. Also, the payment of principal and interest with respect to the Series 2022 Obligations shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Series 2022 Obligations, or amounts treated as proceeds of the Series 2022 Obligations, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Series 2022 Obligations are being executed and delivered, (ii) may be so used in making investments of a *bona fide* debt service fund, or (iii) may be invested in obligations issued by the United States Treasury. In consideration of the purchase and acceptance of the Series 2022 Obligations by the Holders thereof from time to time and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, the Town covenants, and the appropriate officials of the Town are hereby directed, to take all action required by the Code to preserve such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(b) The Town shall comply with the procedures and covenants contained in any arbitrage rebate provision (initially, Section 2.3) or separate agreement executed in connection with the issuance of the Series 2022 Obligations for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Series 2022 Obligations.

(c) (i) The Town shall take all necessary and desirable steps to comply with the requirements hereunder in order to ensure that interest on the Series 2022 Obligations is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the Town receives a Special Counsel’s Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Series 2022 Obligation, or (B) compliance with some other requirement will meet the requirements of the Code. In the event the Town receives such a Special Counsel’s Opinion, this Purchase Agreement shall be amended to conform to the requirements set forth in such opinion.

(ii) If for any reason any requirement hereunder is not complied with, the Town shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable amended diligence and the Town shall pay any required interest or penalty under Regulations section 1.148-3(h).

(d) Written procedures have been established for the Town to ensure that all nonqualified obligations are remediated according to the requirements under the Code and related Regulations and to monitor the requirements of section 148 of the Code relating to arbitrage, with which the Town will comply.

Section 2.3 Arbitrage Rebate Covenants.

(a) Terms used in Subsection (b) and not otherwise defined in Article I or in Subsection (b) shall have the meanings given to them in the Code and the Regulations.

(b) For purposes of this Section, the following terms shall have the following meanings:

“*Bond Year*” the first Bond Year shall begin on the date of issue of the Series 2022 Obligations and shall end on July 1, 2023, and the last Bond Year shall end on the date of retirement of the last Series 2022 Obligations. Otherwise, each Bond Year shall be from July 2 to the following July 1.

“*Bond Yield*” is as indicated in the Tax Certificate and means the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Series 2022 Obligations as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of issue of the Series 2022 Obligations and using semiannual compounding on the basis of a 360-day year. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3).

“*Gross Proceeds*” means:

(i) any amounts actually or constructively received by the Town from the sale of the Series 2022 Obligations;

(ii) transferred proceeds of the Series 2022 Obligations under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the Series 2022 Obligations within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Series 2022 Obligations, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Series 2022 Obligations in the event the Town encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Indenture.

“*Investment Property*” means any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

“*Issue Price*” is as indicated in the Tax Certificate and shall be determined as provided in Regulations section 1.148-1(b).

“*Nonpurpose Investment*” means any Investment Property acquired with Gross Proceeds, and that is not acquired to carry out the governmental purposes of the Series 2022 Obligations.

“*Payment*” means any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

“*Rebate Requirement*” means at any time the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

“*Receipt*” means any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

(c) Within 60 days after the end of each Bond Year, unless an exemption from the requirement to do so is provided by the Code and the Regulations, the Town shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(i) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount that, when added to the future value of all previous rebate payments with respect to the Series 2022 Obligations (determined as of such Computation Date), is equal to at least 90 percent of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the Series 2022 Obligations (determined as of the last day of such Bond Year) and

(ii) not later than 60 days after the retirement of the last Series 2022 Obligation, an amount equal to 100 percent of the Rebate Requirement (determined as of the date of retirement of the last Series 2022 Obligation).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201 (or at such other address then specified by the Internal Revenue Service), on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(d) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(e) For purposes of Subsection (d), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(i) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(ii) Except as provided in Subsection (f) or (g), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(iii) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(f) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(i) the yield on reasonably comparable direct obligations of the United States and

(ii) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(g) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(i) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Town or any other person (whether or not in connection with the Series 2022 Obligations), and that the bid is not being submitted solely as a courtesy to the Town or any other person for purposes of satisfying the requirements in the Regulations that the Town receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Series 2022 Obligations.

(ii) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(iii) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Series 2022 Obligations (e.g., a lead underwriter within 15 days of the issue date of the Series 2022 Obligations or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the Town uses an agent to conduct the bidding, the agent may not bid.

(iv) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(v) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(vi) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(vii) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(viii) The Town retains until three years after the last Outstanding Series 2022 Obligation is retired, (A) a copy of the guaranteed investment contract, (B) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the Town and a copy of the provider's certification described in (vii) above, (C) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (D) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) Such experts and consultants shall be employed to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with section 148(f) of the Code with respect to the Series 2022 Obligations.

ARTICLE III AGREEMENT OF SALE; PURCHASE PRICE; TAXES

Section 3.1 Agreement of Sale. In order to refinance the costs of the Projects that have not been paid to date, the Town hereby sells and conveys any interests it has in the Projects to the

Seller, without warranty, for the sum of \$10.00 and other valuable consideration had and received. For the amounts payable pursuant hereto (including the Purchase Price), the Seller in turn hereby sells and conveys back to the Town, without warranty, and the Town hereby purchases from the Seller, any interests the Seller has in the Projects. In order to evidence such sale and conveyance, the Seller has executed and delivered to the Town a bill of sale in substantially the form of the *Exhibit* attached hereto and incorporated by reference herein.

Section 3.2 Possession of and Title to Projects; Authority of Seller to Pledge Its Interests.

(a) The Town shall be entitled to possession of, and full and unencumbered title to, the Projects, without suit, trouble or hindrance from the Seller. The Projects shall be made a part of the System and shall be used in accordance with all applicable laws.

(b) The Seller may mortgage, hypothecate or pledge all or any part of the interest of the Seller in this Purchase Agreement as security for the Series 2022 Obligations.

Section 3.3 Amounts Payable After Execution and Delivery of Series 2022 Obligations.

After providing for any amounts due pursuant to Section 2.3(c), the Net Revenues received pursuant to Section 4.1 (or, if sufficient amounts are not available therefrom, amounts withdrawn from the Debt Service Reserve Account or the Repair and Replacement Fund) shall be paid for the following purposes and in the following order of priority, after decreasing any such payment for any interest income or gain received, or increasing such payment for any loss realized, during the preceding month in the account to which such payment is to be deposited:

(i) Fees and expenses of the Trustee in accordance with the provisions of Section 8.8 of the Indenture to the Trustee.

(ii) The payments on the dates and in the amounts set forth in the Schedule attached hereto and incorporated by reference herein for deposit to the Interest Account and/or the Principal Account, as applicable.

(iii) Commencing January 1, 2023, and on each July 1 and January 1 thereafter, an amount equal to 50 percent of the Repair and Replacement Fund Funding Requirement for deposit to the Repair and Replacement Fund.

(iv) Commencing on the January 15 following the Fiscal Year of the Town in which the Pledged Revenues are less than 150 percent of the highest year's debt service or comparable payments on the Senior Parity Obligations, and each January 15 thereafter, an amount equal to one-fifth (1/5) of the amount required to fund and maintain the Debt Service Reserve Account in an amount equal to the Reserve Requirement until such time as the amount on deposit in the Debt Service Reserve Account shall equal the Reserve Requirement and on the fifteenth (15th) day of each month, commencing on the first (1st) day of the month following a payment made on the Series 2022 Obligations from the Debt Service Reserve Account, an amount equal to one-twelfth (1/12) of the amount which, when added to the balance then in the Debt Service Reserve Account, shall be equal to the Reserve Requirement.

In the event the Town should fail to make when due any of the payments required by this Section, the installment so in default shall continue as an obligation of the Town, payable solely from the Net Revenues, until the amount in default shall have been fully paid, and the Town shall pay the same with interest thereon at the rate applicable to the corresponding maturities of Series 2022 Obligations, from the date said payment was to be made to the date of payment by the Town until paid. This Purchase Agreement shall be deemed and construed to be a “*net purchase agreement*,” and the payments provided for in this Section shall be an absolute net return to the Seller, free and clear of any expenses or charges whatsoever, except as otherwise specifically provided herein. The Town shall cause an amount of Revenues to be included in the annual budget and appropriation for every Fiscal Year sufficient to meet all requirements of this Purchase Agreement.

Section 3.4 Obligations of Town Hereunder Unconditional. The obligations of the Town to make the payments required in Section 3.3 and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, regardless of the continued existence of the Projects or their physical condition. The Town (a) shall not diminish, suspend or discontinue any payments provided for in Section 3.3, (b) shall perform and observe all of its other agreements contained in this Purchase Agreement, and (c) shall not terminate this Purchase Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, loss, theft or destruction of or damage to the Projects, or any part thereof, frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Purchase Agreement. Nothing contained in this Section shall be construed to release the Seller from the performance of any of the agreements on its part herein contained, and in the event the Seller shall fail to perform any such agreement on its part, the Town may institute such action against the Seller as the Town may deem necessary to compel performance or recover its damages for non-performance so long as such action shall not violate or impair the effectiveness of the agreements on the part of the Town contained in the next two preceding sentences. The Town may, however, at its own cost and expense and in its own name or in the name of the Seller, prosecute or defend any action or proceeding or take any other action involving third persons which the Town deems reasonably necessary in order to secure or protect its rights of ownership, possession and use hereunder, and in such event the Seller hereby agrees to cooperate fully with the Town and to take all action necessary to effect the substitution of the Town for the Seller in any such action or proceeding if the Town shall so request.

Section 3.5 Termination of Payment of Purchase Price; Excess Payments.

(a) Subject to Article VI, upon full payment or provision for payment of the Purchase Price and provided that the Town has performed all the covenants and agreements required by the Town to be performed hereunder, this Purchase Agreement shall cease and expire. Upon the expiration of this Purchase Agreement, the Seller shall cause the Trustee under the Indenture to release any interest that the Trustee may have in the 2022 Property or the revenues thereof from the lien of the Indenture.

(b) In the event of prepayment of the Purchase Price in full or provision for the payment of the Purchase Price in full such that the Indenture shall be discharged by its terms as a result of such prepayment and payment of any fees and charges due and owing to the Trustee, all amounts then on deposit in the Obligation Fund shall be credited toward the amounts then required to be so prepaid at the direction of the Town Representative. Upon the payment thereof in accordance with the Indenture such that the Indenture shall be discharged by its terms, any money remaining which is not otherwise required to be applied to the payment of debt service on the Series 2022 Obligations or to the payment of any other amounts due under the Indenture shall be paid over to the Town.

Section 3.6 Prepayment of Purchase Price Generally. The Town shall be permitted to prepay all or a part of the Purchase Price (including the principal and interest components thereof) to the extent and in the manner provided by the Indenture for the redemption of the Series 2022 Obligations. If such prepayment is made in compliance with the terms of the Indenture, the Trustee shall accept such prepayment to the extent required to provide for a permitted redemption or provision for payment of such Series 2022 Obligations as shall be directed by the Town.

Section 3.7 Effect of Partial Payment or Prepayment. Upon any partial payment or prepayment of the Purchase Price resulting in a redemption of Series 2022 Obligations, each installment of interest which shall thereafter be payable as a part of the Purchase Price shall be reduced, taking into account the interest rate or rates on the Series 2022 Obligations remaining Outstanding after the redemption of Series 2022 Obligations from the proceeds of such partial payment or prepayment so that the interest remaining payable as a part of the Purchase Price shall be sufficient to pay the interest on such Outstanding Series 2022 Obligations when due.

Section 3.8 Taxes. All taxes of any type or nature charged to the Seller or affecting the Projects or affecting the amount available to the Seller from payments received hereunder for the payment of the Series 2022 Obligations (including charges assessed or levied by any governmental agency, district or corporation having power to levy taxes) shall upon receipt of invoices therefor be paid by the Town. Upon written request of the Town, the Seller shall take whatever steps are necessary to contest the amount of tax, or to recover any tax paid if the Town believes such tax or assessment to be improper or invalid. The Town shall reimburse the Seller for any and all costs, including reasonable attorneys' fees, thus incurred by the Seller.

ARTICLE IV SOURCE OF PURCHASE PRICE; RATE COVENANT; PARITY OBLIGATIONS

Section 4.1 Limitation of Source of Town Payments.

(a) This Purchase Agreement is a limited, special obligation of the Town, payable solely and secured as to the payment in accordance with the terms and the provisions hereof.

(b) All amounts to be paid by the Town pursuant to Section 3.3 (or under any other section of this Purchase Agreement) shall be payable solely from the Net Revenues. Nothing, however, shall preclude the Town, in the sole and absolute discretion of the Mayor and Common

Council of the Town, from paying such amounts from other moneys of the Town. Under no circumstances shall amounts paid under this Purchase Agreement from such moneys constitute a pledge thereof, and amounts payable by the Town hereunder (except the Net Revenues) shall never constitute a general obligation of the Town or a pledge of *ad valorem* property taxes by the Town.

(c) The Net Revenues are hereby pledged by the Town to the payment of all amounts due under this Purchase Agreement, and the payment of such amounts shall be secured by a prior and paramount lien on and pledge of the Net Revenues on parity with the pledge and lien granted by the Town for the payment and security of the Loan Agreements and Additional Parity Obligations. The amounts due under this Purchase Agreement, the Loan Agreements and Additional Parity Obligations shall be equally and ratably secured by said pledge and lien without one having priority over the other. The Town intends that this pledge shall be a prior and paramount lien on and senior pledge of the Net Revenues as will be sufficient to make all payments on the Series 2022 Obligations. The Net Revenues shall be immediately subject to such pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all persons having claims of any kind in tort, contract or otherwise against the Town, irrespective of whether such persons have notice thereof. Nothing contained in this Section shall be construed as limiting any authority granted elsewhere herein to incur this Purchase Agreement or Additional Parity Obligations nor be deemed a limitation upon the issuance or incurrence of bonds, notes or other obligations under any law pertaining to the Town secured by moneys, income and funds other than the Net Revenues and other moneys and investments pledged hereunder or under the Indenture. After the application of the Net Revenues for the purposes herein, they may be used for any lawful purpose.

Section 4.2 Rate Covenant. The Town shall establish and maintain schedules of rates, fees and charges for all services supplied by the System which, after making reasonable allowance for contingencies and errors in estimates, shall produce Revenues in each Fiscal Year that are sufficient, (a) to pay the Operation and Maintenance Expenses, (b) to produce an aggregate amount of the Net Revenues equal the sum of (i) one hundred twenty percent (120%) of the aggregate of the debt service or comparable payments payable on the Senior Parity Obligations in such Fiscal Year, and (ii) one hundred percent (100%) of the aggregate of the debt service or comparable payments, separately payable and secured on a basis subordinate to the Senior Parity Obligations by the Net Revenues, and (c) to maintain all necessary fund balances required under the resolutions or agreements of the Town authorizing the Senior Parity Obligations, including the Debt Service Reserve Account and the Repair and Replacement Fund.

Section 4.3 Prior Lien Obligations. The Town shall not incur any obligations payable from the Net Revenues ranking prior to the obligations of the Town under this Purchase Agreement.

Section 4.4 Additional Parity Obligations Generally.

(a) Additional Parity Obligations may be incurred only if there shall not be any Indenture Event of Default or Purchase Event of Default upon the incurrence thereof and the aggregate amount of the Net Revenues for the last full Fiscal Year immediately preceding the incurrence of such Additional Parity Obligations has been at least equal to the sum of the

following: (i) not less than one hundred twenty percent (120%) of the highest year's debt service or comparable payments on the Senior Parity Obligations including the Additional Parity Obligations then to be incurred, and (ii) not less than one hundred percent (100%) of the aggregate of amounts payable in such Fiscal Year and secured on a subordinate basis by such Net Revenues, and (iii) not less than one hundred percent (100%) of any additional amounts required to maintain or fund necessary fund balances under the resolutions or agreements of the Town relating to the obligations described in clause (i).

(b) For the purposes of Subsection (a), additional amounts may be added to the Net Revenues as shown in a report of a Consultant in the following circumstances:

(i) If Revenues have been increased as a result of construction of additions or acquisitions to the System made prior to the incurrence of Additional Parity Obligations but during either the Fiscal Year in which the Additional Parity Obligations are to be incurred or in the preceding Fiscal Year, such increased Revenues may be treated as if such additions to the System were completed on the first day of the Fiscal Year used for purposes of computation. Revenues derived from such additions and acquisitions to the System may be converted for purposes of computation to estimated Net Revenues which would have been derived therefrom if said additions and acquisitions had actually been completed on the first day of the year used for computation purposes.

(ii) If all or part of the proceeds of such Additional Parity Obligations are to be expended for the acquisition of existing water or sewer properties or facilities, there may be added to the Net Revenues of such preceding Fiscal Year the Net Revenues which would be derived from the operation of such properties or facilities if such properties or facilities had been acquired and operated by the Town under the Town's applicable rate schedule during the entire preceding Fiscal Year, such Net Revenues to be estimated by an independent engineer or firm of such engineers having a favorable reputation with respect to such matters.

(iii) If prior to the incurrence of such Additional Parity Obligations and subsequent to the first day of such preceding Fiscal Year, the Town shall have increased its rates or charges imposed for water or sewer services, there may be added to the Net Revenues of such Fiscal Year the additional Net Revenues which would have been received from the operation of the System during such Fiscal Year had such increase been in effect throughout such Fiscal Year, such Net Revenues to be estimated by an independent engineer or firm of such engineers having a favorable reputation with respect to such matters.

(d) For purposes of calculations under Subsection (a), if Additional Parity Obligations are to be incurred exclusively for the purpose of refunding or retiring a portion of the Senior Parity Obligations, for the purpose of the calculation required under such Subsection, the percentage requirement on such obligations will be taken into consideration only in any future Fiscal Year in which any fractional part of such obligations will remain outstanding after the incurrence of such Additional Parity Obligations; provided that nothing herein contained shall be construed to limit or restrict the incurrence of any Additional Parity Obligations if, before or as a

result of the incurrence of such Additional Parity Obligations, full payment for any such obligations will be provided for by funds from the proceeds of Additional Parity Obligations.

**ARTICLE V
COVENANTS REGARDING THE SYSTEM;
REPAIR AND REPLACEMENT FUND**

Section 5.1 Covenants Regarding the System. Article 1 and Sections 2.6 and 2.7 of the Loan Agreement Standard Terms and Conditions in the Loan Agreements are incorporated herein by reference and shall, notwithstanding payment of the Loan Agreements in full or provision therefor, shall be and remain a part hereof. To the extent an action to be taken by the Town requires the consent of WIFA under any of the foregoing provisions of the Loan Agreements, the Town need only receive consent from WIFA prior to taking such action and need not receive consent from the Holders, the Trustee or the Seller prior to taking such action.

Section 5.2 Repair and Replacement Fund. The Town shall create the Repair and Replacement Fund in its custody. Amounts in the Repair and Replacement Fund shall be used for (i) the acquisition of new, or the replacement of obsolete or worn out, machinery, equipment, furniture, fixtures or other personal property for the System provided that the property is depreciable, (ii) the performance of repairs with respect to the System which are of an extraordinary and non-recurring nature provided that the property is depreciable, and/or (iii) the acquisition or construction of additions to or improvements, extensions or enlargements to, or remodeling of, the System provided that the property is depreciable. Amounts in the Repair and Replacement Fund shall also be used as provided in Section 3.3. Notwithstanding anything herein or in the Indenture to the contrary, upon payment in full of all amounts due pursuant to the Senior Parity Obligations, any amounts held in the Repair and Replacement Fund shall be released and may be used by the Town for any lawful purpose.

**ARTICLE VI
INDEMNIFICATION**

To the extent permitted by law, the Town hereby indemnifies and holds the Seller, its directors, officers, agents, attorneys and employees, harmless for, from and against any and all claims, expenses, liens, judgments, liability or loss whatsoever, including reasonable legal fees and expenses, relating to or in any way arising out of (a) this Purchase Agreement, the Indenture, financing statements, supplements, amendments or additions thereto or the enforcement of any of the terms thereof; (b) the Series 2022 Obligations; (c) the sale and execution and delivery of the Series 2022 Obligations or the transactions contemplated in any of the aforementioned acts, agreements or documents; or (d) the acquisition, purchase, ownership, lease, possession, rental, use, operation, sale or disposition of the Projects hereunder or in connection herewith (including, without limitation, expense, liability or loss relating to or in any way arising out of injury to persons, property or the environment, patent or invention rights or strict liability in tort). The right of the Seller to indemnification from the Town shall not extend to claims, suits and actions successfully brought against the Seller for, or losses, liabilities or expenses incurred as a result of, the negligence, bad faith, willful misconduct or breach of trust of the Seller. To the extent that the

Town makes or provides for payment to the satisfaction of the Seller under the indemnity provisions hereof, the Town shall be subrogated to the rights of the Seller with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that, except to the foregoing extent, the Seller shall have the right to determine such settlement. The Town shall pay all amounts due hereunder promptly upon notice thereof from the Seller. In case any action, suit or proceeding is brought against the Seller, if any, by reason of any act or condition which requires indemnification by the Town hereunder, the Seller shall notify the Town promptly of such action, suit or proceeding, and the Town may (and shall upon the request of the Seller), at the expense of the Town, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended, by counsel designated by the Town and approved by the Seller. If the Seller desires to participate in the defense of such action, suit or proceeding through its own counsel, it may do so at its own expense. The Seller, its directors, officers, agents, attorneys, and employees, shall not be liable to the Town or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in connection with the Projects. These indemnity provisions shall survive the satisfaction and expiration of this Purchase Agreement and the Indenture.

ARTICLE VII DEFAULT AND REMEDIES

Section 7.1 Purchase Events of Default. Any one or more of the following events (herein called “*Purchase Events of Default*”) shall constitute a default hereunder:

(a) The Town shall fail to make any payment when due under Subsection 3.3(ii); or

(b) The Town shall fail to make any payment under Subsection 3.3(i) for a period of 30 days after notice of such failure shall have been given in writing to the Town by the Seller or by the Trustee; or

(c) The Town shall fail to perform any other covenant herein for a period of 30 days after written notice specifying such default shall have been given to the Town by the Seller or the Trustee, provided that if such failure be such that it cannot be remedied within such 30 day period, it shall not be deemed a Purchase Event of Default so long as the Town diligently tries to remedy the same, which it shall certify in writing to the Trustee; or

(d) The filing by the Town of a voluntary petition in bankruptcy, or failure by the Town promptly to lift any execution, garnishment or attachment, or assignment by the Town for the benefit of creditors, or the entry by the Town into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Town in any proceedings instituted under the provisions of the federal bankruptcy statutes, as amended, or under any similar acts which may hereafter be enacted.

Section 7.2 Remedies on Default by Town. Upon the occurrence of a Purchase Event of Default, the Seller shall, but only if requested to do so by the Trustee, without further demand or notice, exercise any of the available remedies at law or in equity, including, but not limited to,

specific performance, however, under no circumstances may amounts due hereunder be accelerated. Upon the filing of suit by the Trustee, any court having jurisdiction of the action may appoint a receiver to administer the System for the Town with power to charge and collect fees sufficient to pay all of the Operation and Maintenance Expenses and to make all required payments hereunder. The Seller may assign any or all of its rights and privileges under this Section to the Trustee, and upon furnishing evidence of such assignment to the Town, the Trustee may exercise any or all of such rights or privileges as it may deem advisable.

Section 7.3 Default by Seller. The Seller shall in no event be in default in the performance of any of its obligations hereunder unless and until the Seller shall have failed to perform such obligation within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the Town to the Seller properly specifying how the Seller has failed to perform any such obligation. No default by the Seller shall relieve the Town of its obligations to make the various payments herein required, so long as any of the Series 2022 Obligations remain Outstanding; however, the Town may exercise any other remedy available at law or in equity to require the Seller to remedy such default so long as such remedy does not interfere with or endanger the payments required to be made to the Trustee under the Indenture.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Arizona Law to Govern; Entire Agreement.

(a) This Purchase Agreement shall be governed exclusively by the provisions hereof and by the laws of the State as the same from time to time exist.

(b) This Purchase Agreement expresses the entire understanding and all agreements of the parties hereto with each other and neither party hereto has made or shall be bound by any agreement or by representation to the other party with respect to the matters covered hereby which is not expressly set forth in this Purchase Agreement.

Section 8.2 Assignment and Pledge of Seller's Interest in Purchase Agreement. The Seller assigns, mortgages, hypothecates and pledges to the Trustee all and every part of the right, privilege and interest of the Seller in this Purchase Agreement. The Town consents to such assignment, mortgage hypothecation and pledge.

Section 8.3 Recordation and Filing of Instruments. The Town shall prepare all documents of every kind and description, make all filings and recordings and shall deliver all Opinions of Counsel to the Seller and to the Trustee required under any provision of the Indenture.

Section 8.4 Right of Seller and Trustee to Perform Town's Obligations Hereunder. In the event that the Town should fail for any reason to make any payment or perform any obligation hereunder, and such failure shall continue for a period of 30 days after written notice has been given to the Town by the Seller or the Trustee specifying such failure and requesting that it be remedied, the Seller, or the Trustee on its behalf, may but shall not be required to make any such payment or to perform any such duty. The amount of such payment and all expenses reasonably

incurred by the Seller and the Trustee in making such payment and performing such duty shall be additional items payable hereunder and shall be paid by the Town immediately upon invoices by the Seller or the Trustee with interest at the average rate of interest applicable to the Series 2022 Obligations from the date said payment was due or expenses incurred to the date of payment by the Town.

Section 8.5 Notices; Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, delivered, or transmitted by telecopy, telex or other electronic transmission that produces written evidence of its delivery, to the party for which the same is intended, as follows:

To the Seller or the Trustee:

Attention: Global Corporate Trust

To the Town:

Town of Queen Creek, Arizona
22358 South Ellsworth Road
Queen Creek, Arizona 85142
Attention: Town Manager

or to such other address as such party may hereafter designate by notice in writing addressed and mailed or delivered to the other party hereto.

Section 8.6 Amendments Hereto. This Purchase Agreement may only be amended with the express written consent of the Trustee and in accordance with the provisions of the Indenture.

Section 8.7 Severability. If any term or provision of this Purchase Agreement or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Purchase Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Purchase Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 8.8 Counterparts. This Purchase Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one Series 2022 Purchase Agreement, and it is also understood and agreed that separate counterparts of this Purchase Agreement may separately be executed by the Seller and the Town, all with the same full force and effect as though the same counterpart had been executed by both the Seller and the Town.

Section 8.9 Assignment by Town. Neither this Purchase Agreement nor any interest of the Town herein may at any time after the date hereof, without the prior written consent of the Trustee, be mortgaged, pledged, assigned or transferred by the Town by voluntary act or by operation of law or otherwise. The Town shall at all times remain liable for the performance of all of the covenants and conditions on its part to be performed, notwithstanding any such action.

Section 8.10 Certain Statutory Notices.

(a) To the extent applicable by provision of law, the Seller acknowledges that this Purchase Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, the provisions of which are incorporated herein and which provides that the Town may within three (3) years after its execution cancel any contract (including this Purchase Agreement) without penalty or further obligation made by the Town 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 of the contract is in effect, an employee or agent 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.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, the Seller shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the E-verify requirements under Section 23-214(A), Arizona Revised Statutes. The breach by the Seller of the foregoing shall be deemed a material breach of this Purchase Agreement and may result in the termination of the services of the Seller by the Town. The Town retains the legal right to randomly inspect the papers and records of the Seller to ensure that the Seller is complying with the above-mentioned warranty. The Seller shall keep such papers and records open for random inspection during normal business hours by the Seller. The Seller shall cooperate with the random inspections by the Town including granting the Town entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential. The Town shall preserve the confidentiality of any information, records or papers the Town views, accesses or otherwise obtains during any and every such random inspection, including, without limitation, such information.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Seller hereby certifies it is not currently engaged in, and for the duration of this Purchase Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Town determines that the Seller’s certification above is false or that it has breached such agreement, the Town may impose remedies as provided by law.

Section 8.11 Holidays. When any action is provided herein to be done on a day named or within a time period named, and the day or the last day of the period falls on a day other than a Business Day, it may be performed on the next ensuing Business Day with effect as though performed on the appointed day or within the specified period.

[Signature page follows.]

IN WITNESS WHEREOF, the Town and the Seller have caused their respective corporate names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

_____, as the Seller

By.....
Authorized Representative

THE TOWN OF QUEEN CREEK, ARIZONA, as
purchaser

By.....
Mayor

ATTEST:

.....
Town Clerk

[Signature page to Series 2022 Senior Lien Utility System Revenue Purchase Agreement]

ACKNOWLEDGEMENT AND ACCEPTANCE

_____, as trustee (the “Trustee”) under the Series 2022 Senior Lien Utility System Revenue Obligation Indenture, dated as of the date of this Purchase Agreement, between the Town and the Trustee, has caused its corporate name to be signed to this Purchase Agreement by its duly authorized officer, all as of the day and year first above written, for purposes of acknowledging receipt of this Purchase Agreement and accepting the assignment and pledge of the Seller contained in Section 8.2.

_____, as Trustee

By.....
Authorized Representative

EXHIBIT

FORM OF BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That _____, a national banking association, authorized to exercise trust powers in the State of Arizona (the “*Seller*”), for good and valuable consideration received by the Seller from The Town of Queen Creek, Arizona (the “*Town*”), receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey to the Town, its successors and assigns, the Projects as defined in the Series 2022 Purchase Agreement, dated as of _____ 1, 2022, by and between the Seller and the Town, to have and to hold the property as sold to the Town and its successors and assigns forever.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed this 11th day of May 2022.

By.....
Authorized Representative

SCHEDULE

PAYMENT SCHEDULE

Payment Date	Principal	Interest	Total Payment
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Totals

SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE OBLIGATION INDENTURE

THE TOWN OF QUEEN CREEK, ARIZONA

AND

_____,
AS TRUSTEE

DATED AS OF MAY 1, 2022

\$____,000
Senior Lien Utility System Revenue Refunding Obligations, Series 2022,
Evidencing Proportionate Interests of the Holders Thereof
in Installment Payments of the Purchase Price to be Paid
by the Town of Queen Creek, Arizona, Pursuant to a
Series 2022 Senior Lien Utility System Revenue Purchase Agreement,
Dated as of May 1, 2022

**(This Table of Contents is for informational purposes only
and is not to be considered a part of this Indenture)**

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EXHIBIT – Form of Series 2022 Obligation

SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE OBLIGATION INDENTURE

THIS SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE OBLIGATION INDENTURE, dated as of May 1, 2022 (this “*Indenture*”), by and between THE TOWN OF QUEEN CREEK, ARIZONA, a municipal corporation of the State of Arizona (the “*Town*”), and _____, a national banking association, authorized to exercise trust powers in the State of Arizona, as trustee, and any successor to its duties hereunder (the “*Trustee*”),

WITNESSETH:

WHEREAS, the Trustee, in its separate capacity as seller (the “*Seller*”), and the Town, as purchaser, have entered into a Series 2022 Senior Lien Utility System Revenue Purchase Agreement, dated as of May 1, 2022 (the “*Series 2022 Purchase Agreement*”), pursuant to which the execution and delivery of certain Senior Lien Utility System Revenue Refunding Obligations, Series 2022, Evidencing Proportionate Interests of the Holders Thereof in Installment Payments of the Purchase Price to be Paid by The Town of Queen Creek, Arizona, Pursuant to a Series 2022 Purchase Agreement, dated as of May 1, 2022 (the “*Series 2022 Obligations*”), has been provided; and

WHEREAS, rights pursuant to the Series 2022 Purchase Agreement have been assigned and transferred to the Trustee for purposes hereof, and in consideration of such assignment and the execution hereof, the Trustee shall execute and deliver the Series 2022 Obligations, each evidencing a proportionate interest in certain rights pursuant to the Series 2022 Purchase Agreement, including the payment of the Purchase Price (as defined in the Series 2022 Purchase Agreement);

GRANTING CLAUSES

NOW, THEREFORE, THIS INDENTURE FURTHER WITNESSETH: That in order to secure all of the Series 2022 Obligations executed and delivered pursuant hereto, the payment of principal and interest thereon, the rights of the Holder (as defined herein) and the performance and observance of the covenants and conditions contained herein and in the Series 2022 Obligations and the Series 2022 Purchase Agreement, the Trustee shall receive and hold as security for the Holder, and there shall be granted a security interest in and released, assigned, transferred, pledged, mortgaged, granted and conveyed unto the Trustee or any successor to its duties hereunder, the following described property:

A. All rights and interests in, under and pursuant to the Series 2022 Purchase Agreement of the Seller as assigned, mortgaged, hypothecated and pledged pursuant to the Series 2022 Purchase Agreement, provided that the assignment made by this clause shall not include any right to limitation of liability, indemnification of liability, or payment or reimbursement of fees, costs or expenses,

B. Amounts on deposit from time to time in the funds and accounts created pursuant hereto subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, and

C. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Series 2022 Obligations, by the Town or by anyone on its behalf or with its written consent, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof,

TO HAVE AND TO HOLD all said properties assigned, mortgaged, hypothecated and pledged and conveyed by the Seller, including all additional property that by the terms hereof has or may become subject to the encumbrance hereof, unto the Trustee and its successors in trust and its assigns forever, subject, however, to the rights reserved hereunder,

IN TRUST NEVERTHELESS, for the benefit and security of the Holder from time to time of the Series 2022 Obligations executed and delivered and Outstanding (as defined herein) under this Indenture; and conditioned, however, that if all liabilities, obligations and sums at any time secured hereby shall be well and truly paid, or caused to be paid fully and promptly when due, and all of the covenants, warranties and agreements contained herein shall promptly, faithfully and strictly be kept, performed and observed, then and in such event, this Indenture shall be and become void and of no further force and effect; otherwise, the same shall remain in full force and effect, and upon the trust and subject to the covenants and conditions hereinafter set forth.

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS
OF GENERAL APPLICATION

Section 1.1 Definitions. In addition to the parties and to the words and phrases defined in the Recitals hereto, for the purpose hereof unless the context otherwise requires, the following words and phrases shall have the following meanings:

“*Business Day*” means a day on which banks located in the City of Phoenix, Arizona, and in the city or cities in which the principal office of the Trustee are not required or authorized by law or executive order to remain closed.

“*Code*” means the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

“*Costs of Issuance Fund*” means the fund of that name created pursuant to Section 5.1.

“*Debt Service Reserve Account*” means the account of the Obligation Fund of that name created pursuant to Section 5.1.

“*Defeasance Obligations*” means any of the following: (1) cash, (2) non-callable direct obligations of the United States of America (“Treasuries”), or (3) evidences of ownership of proportionate interest in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest

and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated.

“*Depository Trustee*” means any financial institution meeting the requirements as a successor Trustee under Section 8.6 which may be designated by the Town.

“*Holder*” or “*holder*” means the registered owner of the Series 2022 Obligations from time to time, initially, the Purchaser.

“*Indenture Event of Default*” means any one of those events set forth in Section 7.1.

“*Interest Account*” means the account of the Obligation Fund of that name created pursuant to Section 5.1.

“*Loan Being Prepaid*” means the Loan Agreement, dated as of March 27, 2008, by and between the Town and WIFA.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency for the type of credit in question, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Town by written notice to the Trustee.

“*Obligation Fund*” means the fund of that name created pursuant to Section 5.1.

“*Obligation Payment Date*” means each January 1 and July 1, commencing July 1, 2022, so long as the Series 2022 Obligations are Outstanding.

“*Opinion of Counsel*” means a written opinion of an attorney or firm of attorneys acceptable to the Trustee and who or which (except as otherwise expressly provided herein or in the Series 2022 Purchase Agreement) may be counsel for the Town or the Trustee, provided that such attorney or firm of attorneys may not be an employee of the Trustee.

“*Outstanding*” when used with reference to the Series 2022 Obligations, means, as of any date of determination, all Series 2022 Obligations theretofore executed and delivered except:

(i) Series 2022 Obligations theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Series 2022 Obligations that are deemed paid and no longer Outstanding as provided herein, including as a result of irrevocable instructions being provided by the Town for redemption thereof; and

(iii) Series 2022 Obligations in lieu of which other Series 2022 Obligations have been executed and delivered pursuant to the provisions hereof relating to Series 2022 Obligations destroyed, stolen or lost, unless evidence satisfactory to the

Trustee has been received that any such Series 2022 Obligation is held by a bona fide purchaser.

“*Permitted Investments*” means any investment permitted for moneys of the Town by the laws of the State.

“*Person*” shall include an individual, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

“*Principal Account*” means the account of the Obligation Fund of that name created pursuant to Section 5.1.

“*Principal Installment*” means, for any particular date, the aggregate of the principal amount of Series 2022 Obligations that is due on such date.

“*Purchaser*” means _____, a _____.

“*Qualified Reserve Fund Instrument*” means a letter or line of credit, insurance policy or surety bond that meets the requirements set forth below:

(i) A surety bond or insurance policy issued to the Trustee by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Series 2022 Obligations may be deposited in the Debt Service Reserve Account to meet the amount that should have then been on deposit in the Debt Service Reserve Account pursuant to the requirements of the Purchase Agreement if the claims paying ability of the issuer thereof shall be rated at least “AA-” or “Aa3” by S&P or Moody’s, respectively.

(ii) An unconditional irrevocable letter of credit issued to the Trustee, as agent of the Holders of the Series 2022 Obligations, by a bank may be deposited in the Debt Service Reserve Account to meet the amount that should have then been on deposit in the Debt Service Reserve Account pursuant to the requirements of the Purchase Agreement if the issuer thereof is rated at least “AA-” by S&P. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the Series 2022 Obligations. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the Town and the Trustee, not later than 24 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.

The letter of credit shall permit a draw in full not less than 14 days prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee is authorized and directed to draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Debt Service Reserve Account is fully funded in its required amount.

If the expiration date of the letter of credit shall not be extended, the Town may deposit in the Debt Service Reserve Account an amount sufficient to cause cash or Permitted Investments on deposit in the Debt Service Reserve Account to equal the amount that should have then been on deposit in the Debt Service Reserve Account pursuant to the requirements of the Purchase Agreement, such deposit to be paid in equal installments on at least a semiannual basis over the ensuing three years, unless the Qualified Reserve Fund Instrument is replaced by a Qualified Reserve Fund Instrument meeting the requirements in either (i) or (ii) above.

The deposit of any Qualified Reserve Fund Instrument pursuant to this paragraph (ii) shall be subject to receipt of an opinion of counsel of an attorney or firm of attorneys of nationally recognized standing in the related field as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel of such attorney or firm of attorneys to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the issuer of the Series 2022 Obligations (or any other account party under the letter of credit).

(iii) The obligation to reimburse the issuer of a Qualified Reserve Fund Instrument for any fees, expenses, claims or draws upon such Qualified Reserve Fund Instrument shall be subordinate to the payment of debt service on the Series 2022 Obligations. The right of the issuer of a Qualified Reserve Fund Instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Debt Service Reserve Account, and subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Debt Service Reserve Account. The Qualified Reserve Fund Instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Qualified Reserve Fund Instrument to reimbursement will be further subordinated to cash replenishment of the Debt Service Reserve Account to an amount equal to the difference between the full original amount available under the Qualified Reserve Fund Instrument and the amount then available for further draws or claims. If (A) the issuer of a Qualified Reserve Fund Instrument becomes insolvent or (B) the issuer of a Qualified Reserve Fund Instrument defaults in its payment obligations thereunder or (C) the claims-paying ability of the issuer of the insurance policy or surety bond falls below a S&P "AA-" or a Moody's "Aa3" or (D) the rating of the issuer of the letter of credit falls below a S&P "AA-," the obligation to reimburse the issuer of the Qualified Reserve Fund Instrument shall be subordinate to the cash replenishment of the Debt Service Reserve Account.

(iv) If (A) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated or (B) the rating of the claims paying ability of the

issuer of the surety bond or insurance policy falls below a S&P “AA-” or a Moody’s “Aa3” or (C) the rating of the issuer of the letter of credit falls below a S&P “AA-”, the Town shall either (1) deposit into the Debt Service Reserve Account an amount sufficient to cause the cash or Permitted Investments on deposit in the Debt Service Reserve Account to equal the amount that should have then been on deposit in the Debt Service Reserve Account pursuant to the requirements of the Purchase Agreement, such amount to be paid over the ensuing five years in equal installments deposited at least semiannually or (2) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of (i)-(iii) above within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the surety bond or insurance policy falls below “A” or (b) the rating of the issuer of the letter of credit falls below “A” or (c) the issuer of the Qualified Reserve Fund Instrument defaults in its payment obligations or (d) the issuer of the Qualified Reserve Fund Instrument becomes insolvent, the Town shall either (i) deposit into the Debt Service Reserve Account an amount sufficient to cause the cash or Permitted Investments on deposit in the Debt Service Reserve Account to equal the amount that should have then been on deposit in the Debt Service Reserve Account pursuant to the requirements of the Purchase Agreement, such amount to be paid over the ensuing year in equal monthly installments or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements above, as applicable, within six months of such occurrence.

(v) Where applicable, the amount available for draws or claims under the Qualified Reserve Fund Instrument may be reduced by the amount of cash or Permitted Investments deposited in the Debt Service Reserve Account pursuant to clause (d)(i) of the preceding subparagraph (iv).

(vi) Any amounts owed by the Town to the issuer of the Qualified Reserve Fund Instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to the Purchase Agreement for any purpose, *e.g.*, Sections 4.2 and 4.4 of the Purchase Agreement.

(vii) The Trustee shall ascertain the necessity for a claim or draw upon the Qualified Reserve Fund Instrument and provide notice to the issuer of the Qualified Reserve Fund Instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Qualified Reserve Fund Instrument) prior to each Obligation Payment Date.

(viii) Cash on deposit in the Debt Service Reserve Account shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on the Qualified Reserve Fund Instrument.

(ix) A Qualified Reserve Fund Instrument may not be provided to replace existing cash or Permitted Investments unless the Town obtains, and provides to the Trustee, a Special Counsel’s Opinion to the effect that such action will not cause the interest on any Series 2022 Obligations to become includible in gross income for purposes of federal income taxes.

“*Reserve Requirement*” means, at the time of the deposit to the Debt Service Reserve Account then required, the greatest amount to be paid in any subsequent Fiscal Year of the Town with respect to the Series 2022 Obligations; provided, however, that such amount shall not exceed the least of (a) ten percent (10%) of the net proceeds of the Series 2022 Obligations at the time of original delivery, (b) the greatest amount to be paid in any subsequent Fiscal Year of the Town with respect to the Series 2022 Obligations at the time of original delivery, or (c) one hundred twenty-five percent (125%) of the average annual debt service at the time of original delivery.

“*S&P*” means Standard & Poor’s Financial Services LLC, its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency for the type of credit in question, “*S&P*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Town by written notice to the Trustee.

“*Special Counsel*” means an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the Town.

“*Special Counsel’s Opinion*” means an opinion signed by Special Counsel.

“*State*” means the State of Arizona.

“*Town Representative*” means the Manager, the Chief Financial Officer or any other person at any time designated to act on behalf of the Town by written certificate furnished to the Trustee containing the specimen signature of such person and signed by the Town Manager or his or her designee. Such certificate may designate one or more alternates.

“*WIFA*” means the Water Infrastructure Finance Authority of Arizona.

Section 1.2 Interpretation.

(a) Any reference herein to the Mayor and Common Council or any officer of the Town shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

(b) Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender.

(c) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof. References to “Articles” and “Sections” are to those in this Indenture, unless otherwise specified.

Section 1.3 Obligations Not General Obligations of the Town. The Series 2022 Obligations shall be payable solely out of the revenues and other security pledged hereby and shall

not constitute an indebtedness or general obligation of the Town within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Town or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

ARTICLE II AUTHORIZATION AND TERMS OF SERIES 2022 OBLIGATIONS

Section 2.1 Authorization of Series 2022 Obligations. The Trustee is hereby authorized and directed, upon receipt of a request in writing from the Town Representative, to prepare, execute and deliver \$____,000 aggregate original principal amount of Series 2022 Obligations to the Purchaser in the form of a single Series 2022 Obligation in physically certificated, registered form in such principal amount.

Section 2.2 Form, Date and Payment Terms of Series 2022 Obligations.

(a) The Series 2022 Obligations shall mature on July 1, 20____, be dated the date of their initial execution and delivery, be executed and delivered in the denomination of the principal amount thereof Outstanding from time to time, and bear interest from the most recent Obligation Payment Date to which interest has been paid or for which due provision has been made or, if no interest has been paid, from the date of their initial execution and delivery. Said interest shall be computed by multiplying the remaining unpaid principal with respect to the Series 2022 Obligations (whether paid as a result of mandatory redemption or maturity) by _____ percent (____%) per annum (on the basis of a 360-day year of twelve 30-day months) and represent the portion of each installment of the Purchase Price designated as interest and coming due during the six-month period (or portion thereof) preceding each Obligation Payment Date paid pursuant to Section 5.4(i); provided that the first installment shall be for interest from the date of initial execution and delivery of the Series 2022 Obligations to July 1, 2022. The proportionate share of the portion of each installment of the Purchase Price designated as interest with respect to the Series 2022 Obligations shall be computed by multiplying the portion of each installment of the Purchase Price designated as principal with respect the Series 2022 Obligations by the rate of interest applicable to the Series 2022 Obligations (on the basis of a 360-day year of twelve 30-day months).

(b) The Series 2022 Obligations shall be initially numbered R-1 and delivered to, and registered in the name of, the Purchaser.

(c) Principal of and interest on the Series 2022 Obligations shall be payable when due to the Holder on each Obligation Payment Date, in any coin or currency of the United States of America which, on the related Obligation Payment Dates, is legal tender for the payment of public and private debts. Payment of principal of and interest on the Series 2022 Obligations (including with respect to any redemption) shall be made by check mailed to the address of the Person specified by the Holder, or upon the written direction of the Holder (which direction shall remain effective until the Holder countermands such written direction in writing), the payment of principal of and interest on the Series 2022 Obligations (including with respect to any redemption) may be made by wire transfer of immediately available funds to an account located in a bank within the United States pursuant to wire transfer directions issued by the Holder. Notwithstanding

anything herein to the contrary, the final payment of principal of and interest on the Series 2022 Obligations (whether paid as a result of redemption in full or maturity) shall be paid upon surrender when due at the designated corporate trust office of the Trustee.

(d) Any payment due on the Series 2022 Obligation which shall not be paid when due shall bear interest at a rate equal to the rate of interest borne on the Series 2022 Obligations, from the date such payment is due until the payment is made. Such interest shall be calculated based upon an assumption of a 360-day year of twelve 30-day months, with such interest compounded semiannually.

Section 2.3 Mutilated, Destroyed, Lost and Stolen Series 2022 Obligations. If (a) a mutilated Series 2022 Obligation is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of a Series 2022 Obligation, and (b) there is delivered to the Trustee such security or indemnity as the Trustee may require to hold the Trustee harmless, then, in the absence of notice to the Trustee that such Series 2022 Obligation has been acquired by a bona fide purchaser and upon the Holder paying the reasonable expenses of the Trustee and of any security or indemnity obligation required by the Trustee, the Trustee shall execute and deliver, in exchange for such mutilated Series 2022 Obligation or in lieu of such destroyed, lost or stolen Series 2022 Obligation, a new Series 2022 Obligation of like principal amount and tenor. If such mutilated, destroyed, lost or stolen Series 2022 Obligation has become, or will on or before the next Obligation Payment Date become, due and payable, the Trustee may, in its discretion, pay such Series 2022 Obligation when due instead of delivering a new Series 2022 Obligation.

Section 2.4 Execution of Series 2022 Obligations. All Series 2022 Obligations shall be executed by and in the name of the Trustee by manual signature of an authorized representative of the Trustee. If any authorized representative of the Trustee whose signature appears on any Series 2022 Obligation ceases to be such authorized representative before the date of initial execution and delivery of the Series 2022 Obligations, such signature shall nevertheless be as effective as if the authorized representative had remained in office through such date. Any Series 2022 Obligation may be executed on behalf of the Trustee by such person as at the actual date of the execution of such Series 2022 Obligation shall be the proper officer of the Trustee, although at the nominal date of such Series 2022 Obligation such person shall not have been such officer of the Trustee.

Section 2.5 Registration and Transfer of Series 2022 Obligations.

(a) All Series 2022 Obligations executed and delivered hereunder shall be negotiable, subject to the provisions for registration and transfer thereof contained herein or in the Series 2022 Obligations.

(b) So long as the Series 2022 Obligations are Outstanding, the Trustee shall maintain at its offices books for the registration and transfer of Series 2022 Obligations and shall provide for the registration and transfer of any Series 2022 Obligation under such reasonable regulations as the Trustee may prescribe. The Trustee shall act as registrar for purposes of registering Series 2022 Obligations in accordance with the provisions hereof.

(c) Subject to Subsection (f), each Series 2022 Obligation shall be transferable only upon the registration books maintained by the Trustee, by the Holder thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Holder or his duly authorized attorney. Upon surrender for transfer of any Series 2022 Obligation, the Trustee shall authenticate and deliver, in the name of the transferee, a new Series 2022 Obligation, of the remaining aggregate principal amount of the Series 2022 Obligation.

(d) All Series 2022 Obligations surrendered in any transfer of Series 2022 Obligations shall forthwith be cancelled by the Trustee.

(e) In connection with any such transfer of Series 2022 Obligations the Holder requesting such transfer shall as a condition precedent to the exercise of the privilege of making such transfer remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid with respect to such transfer.

(f) The Purchaser may at any time sell or otherwise transfer the Series 2022 Obligations, in whole, provided that the transferee represents to the Trustee in writing that: (i) it has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment in the Series 2022 Obligations; (ii) it understands that neither this Indenture nor the Series 2022 Obligations will be registered pursuant to the Securities Act of 1933, as amended; (iii) it is (A) an affiliate of the Purchaser, or (B) a “Bank” as defined in Section 3(a)(2) of the Securities Act of 1933, as amended; and (iv) its present intention is to acquire such interest (A) for its own account, or (B) for resale in a transaction exempt from registration under the Securities Act of 1933, as amended. The foregoing transfer restriction shall be set forth by reference on the face of each Series 2022 Obligation. The Trustee shall have no duty or obligation to determine whether or not any transferee meets the requirements set forth herein and shall be fully protected in relying on the representations of such transferee in accordance herewith.

Section 2.6 Persons Deemed Owners. The Holder shall be deemed and regarded as the absolute owner of the Series 2022 Obligations. Such payment shall be valid and effectual to satisfy and discharge the liability upon the Series 2022 Obligation to the extent of the amount so paid.

Section 2.7 Non-Presentation of Series 2022 Obligations. In the event the Series 2022 Obligation shall not be presented for payment, either at maturity or upon redemption in full, if moneys sufficient to pay the principal of and premium, if any, and interest on, such Series 2022 Obligation shall have been deposited hereunder for such payment, all liability to the Holder thereof for the payment of such Series 2022 Obligation shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys as provided herein, including specifically Section 10.3, without liability for interest thereon, for the benefit of the Holder of such Series 2022 Obligation, who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on his part hereunder or on, or with respect to, said Series 2022 Obligation.

**ARTICLE III
REDEMPTION OF SERIES 2022 OBLIGATIONS**

Section 3.1 Right to Redeem. The Series 2022 Obligations shall be subject to redemption prior to maturity, at such times, to the extent and in the manner provided herein.

Section 3.2 Redemption of Series 2022 Obligations.

(a) The Series 2022 Obligations are subject to optional redemption, in whole or in part, on any date on or after _____, 20__, in any principal amount and in any order of maturity, all as directed by the Town, by payment of the principal amount to be redeemed plus interest accrued to the date fixed for redemption, without premium.

(b) The Series 2022 Obligations shall be redeemed on July 1 in the years and in the principal amounts set forth below, at a redemption price equal to the principal amount thereof, without premium, plus the interest accrued to the date of redemption:

<u>Year</u>	<u>Principal Amount</u>
-------------	-------------------------

(maturity)

Section 3.3 Effect of Call for Redemption. On the date designated for redemption by notice given as provided herein, the portion of the Series 2022 Obligations called for redemption shall become and be due and payable at the redemption price of such Series 2022 Obligations on such date. If on the date fixed for redemption moneys or Defeasance Obligations sufficient for payment of the redemption price and accrued interest on such date are held by the Trustee as provided herein, interest on the portion of the Series 2022 Obligations called for redemption shall cease to accrue, such portions of the Series 2022 Obligations shall cease to be entitled to any benefit or security hereunder except the right to receive payment from the moneys or Defeasance Obligations held by the Trustee and the amount of such Series 2022 Obligations called for redemption shall be deemed paid and no longer Outstanding. Presentation of the Series 2022 Obligations shall only be required upon redemption in full for the foregoing to be effective. Whenever Series 2022 Obligations are purchased, redeemed (other than because of mandatory redemption) or delivered for cancellation, the principal amount represented thereby so retired shall

satisfy and be credited against the mandatory redemption requirements therefor in any order specified by the Town.

Section 3.4 Notice of Redemption.

(a) Whenever redemption of Series 2022 Obligations is to be made pursuant to Section 3.2(a), the Trustee shall give notice of the redemption of the Series 2022 Obligation, which notice shall specify the redemption date and the redemption price, and, in the case the Series 2022 Obligations are to be redeemed in part only, such notice shall also specify the portion of the principal amount thereof to be redeemed. Such notice shall further state that on such date there shall become due and payable upon the portion of the Series 2022 Obligation to be redeemed the redemption price thereof, as appropriate, of the specified portion thereof, together with interest accrued to the redemption date on such portion thereof so to be redeemed and that, from and after such date, the portion of the Series 2022 Obligations being redeemed will cease to accrue interest. Notwithstanding the foregoing, no notice of redemption shall be sent unless (i) the Trustee has on deposit sufficient funds to effect such redemption, or (ii) the redemption notice states that redemption is contingent upon receipt of such funds prior to the redemption date.

(b) Such notice shall be given by mailing a copy of such notice, first class United States mail postage prepaid, not less than 30 days nor more than 60 days before the redemption date, to the Holder at its last address appearing upon the registration books.

**ARTICLE IV
FORM OF SERIES 2022 OBLIGATIONS**

The Series 2022 Obligations shall be substantially in the form set forth in the Exhibit hereto with such omissions, insertions and variations as are consistent with the provisions hereof.

**ARTICLE V
REVENUES AND FUNDS**

Section 5.1 Creation of Funds and Accounts. The Trustee shall create (a) the Obligation Fund, which shall contain the following accounts: (i) the Interest Account, (ii) the Principal Account, and (iii) the Debt Service Reserve Account, and (b) the Costs of Issuance Fund. Such funds and accounts shall be held in trust for the benefit of the Holder, as its interests may appear.

Section 5.2 Application of Series 2022 Obligation Proceeds. The Trustee shall receive \$_____, being the proceeds of the sale of the Series 2022 Obligations, (i) \$_____ of which shall be transferred to WIFA to prepay the Loan Being Prepaid, and (ii) the balance of which (\$_____) shall be deposited in the Costs of Issuance Fund and applied pursuant to Section 5.5.

Section 5.3 Flow of Funds Into the Obligation Fund. The following payments to the Trustee shall be applied in the following manner:

(i) The Trustee shall deposit to the Interest Account amounts paid pursuant to Subsection 3.3(ii) of the Series 2022 Purchase Agreement.

(ii) The Trustee shall deposit to the Principal Account amounts paid pursuant to Subsection 3.3(ii) of the Series 2022 Purchase Agreement.

(iii) The Trustee shall deposit to the Debt Service Reserve Account amounts paid pursuant to Section 3.3(iv) of the Purchase Agreement. No deposit need be made into the Debt Service Reserve Account if the amount on deposit therein plus the maximum amount of the Qualified Reserve Fund Instrument contained therein equals the Reserve Requirement.

Section 5.4 Flow of Funds Out of the Obligation Fund. Amounts in the following accounts shall be applied in the following manner:

(i) Amounts in the Interest Account shall be used to pay interest on the Series 2022 Obligations as it becomes due.

(ii) Amounts in the Principal Account shall be used to retire Series 2022 Obligations by payment at their scheduled maturity date

(iii) (A) Amounts in the Debt Service Reserve Account shall be used to pay the interest on, or to retire at their scheduled maturity or mandatory redemption date, the Series 2022 Obligations in the event that no other money of the Town is available therefor or for the retirement (including by defeasance pursuant to Section 10.2) of all of the Series 2022 Obligations then Outstanding. If and to the extent that money has been deposited in the Debt Service Reserve Account, all such money shall be used (or investments purchased with such money shall be liquidated and the proceeds applied as required) prior to any drawing under a Qualified Reserve Fund Instrument.

(B) Notwithstanding anything herein or in the Purchase Agreement to the contrary, if, after the Town has been required to make deposits to the Debt Service Reserve Account pursuant to Section 3.3(iv) of the Purchase Agreement, the Net Revenues for two consecutive Fiscal Years equal or exceed 150 percent of the highest year's debt service or comparable payments on the Senior Parity Obligations (as defined in the Purchase Agreement) for such Fiscal Years, any moneys and/or Qualified Reserve Fund Instrument held in the Debt Service Reserve Account may be released and (except as otherwise limited by the terms of any Qualified Reserve Fund Instrument) used by the Town for any lawful purpose, and the Town's obligation to maintain the Reserve Requirement in the Debt Service Reserve Account shall terminate, subject to Section 3.3(iv) of the Purchase Agreement for funding the Debt Service Reserve Account if the circumstances described in Section 3.3(iv) of the Purchase Agreement occur.

Section 5.5 Flow of Funds Out of Costs of Issuance Fund. Moneys in the Costs of Issuance Fund shall be disbursed by the Trustee at the direction of the Town for costs and expenses relating to the sale, credit enhancement, if any, and execution and delivery of the Series 2022 Obligations, including, but not limited to "out of pocket" expenses and charges, fees and

disbursements of the financial advisor to the Town, special counsel, rating agencies, printing expenses and other expenses reasonably incurred by the Town or the Trustee in connection therewith. On the earlier of July 1, 2022, or when all the above-described costs have been paid, the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Obligation Fund, and the Costs of Issuance Fund shall be closed. The Trustee shall rely fully on any such request for disbursement by the Town pursuant to this Section and shall not be required to make any investigation in connection therewith.

Section 5.6 Investment of Moneys Held by Trustee.

(a) Moneys in all accounts held by the Trustee shall be invested by the Trustee, as soon as possible upon receipt of immediately available funds at its designated corporate trust office, to the fullest amount possible in Permitted Investments as directed, in writing, by the Town Representative; provided that the maturity date or the date on which such Permitted Investments may be redeemed at the option of the holder thereof shall coincide as nearly as practicable with (but in no event shall be later than) the date or dates on which moneys in the accounts for which the investments were made will be required for the purposes thereof. In the event no investment direction is given to the Trustee by the Town, then the Trustee shall invest moneys in investments described in paragraph 3 of the definition of Defeasance Obligations.

(b) Amounts credited to an account may be invested, together with amounts credited to one or more other accounts, in the same Permitted Investment, provided that (i) each such investment complies in all respects with the provisions of Subsection (a) as they apply to each fund or account for which the joint investment is made and (ii) the Trustee maintains separate records for each fund and account and such investments are accurately reflected therein.

(c) The Trustee may make any investment permitted by this Section, through or with its own commercial banking or investment departments unless otherwise directed by the Town Representative.

(d) The Trustee shall sell at the best price obtainable, or present for redemption, any Permitted Investment purchased by it as an investment whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the fund or account for which such investment was made.

(e) (i) The Trustee shall not knowingly make any investment at a “yield” in excess of the maximum yield, if any, stated with respect to the source of moneys therefor in any arbitrage or other similar certificate executed and delivered pursuant to section 148 of the Code or any successor section of the Code, issued in connection with the execution and delivery of the Series 2022 Obligations except during any “temporary period” stated in any arbitrage or other certificate, and the Trustee shall make and keep appropriate records of such investments, yields and temporary periods as required by section 148 of the Code or any successor section thereof. Notwithstanding the foregoing, investments may be made at a higher “yield” or for a different “temporary period” or both in accordance with written instructions of Special Counsel filed with and addressed to the Trustee.

(ii) Neither the Trustee nor the Town shall knowingly use or direct or permit the use of any moneys of the Town in its possession or control in any manner which would cause any Series 2022 Obligation to be an “arbitrage obligation” within the meaning ascribed to such term in section 148 of the Code, or any successor section of the Code. The Trustee and the Town shall comply with and take all actions required by any arbitrage or similar certificate and will continue to do so notwithstanding any satisfaction or discharge of this Indenture.

(f) The Trustee may conclusively rely upon the written direction of the Town as a representation to the Trustee that the investments directed by the Town in such written direction constitute Permitted Investments.

(g) To the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Town the right to receive brokerage confirmations of security transactions as they occur, the Town specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Town periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

Section 5.7 Liability of Trustee for Investments. The Trustee shall not be liable for any loss resulting from the making of any investment made in accordance with the provisions hereof, except for its own negligence, willful misconduct or breach of trust.

Section 5.8 Investment Income. Except as otherwise provided herein, interest income and gain received, or loss realized, from investments or moneys in any fund or account shall be credited, or charged, as the case may be, to such respective fund or account.

ARTICLE VI CERTAIN COVENANTS

Section 6.1 Payment of Principal and Interest. Subject to the limited liability and sources of payment specified herein, the Series 2022 Obligations shall be promptly paid in the amounts due at the place, on the dates and in the manner provided herein and in said Series 2022 Obligations according to the terms thereof. The amounts due on the Series 2022 Obligations are payable solely from moneys held or received by the Trustee hereunder, all of which are hereby specifically assigned and pledged to such payment in the manner and to the extent specified herein and nothing herein or in the Series 2022 Obligations shall be construed as assigning or pledging any other funds or assets of the Town.

Section 6.2 Performance of Covenants. Subject to the limited liability and sources of payment described herein and except to the extent assigned to the Trustee hereunder, the Town shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions on its part to be performed as provided herein, in each and every Series 2022 Obligation executed and delivered hereunder and in all proceedings of the Town pertaining thereto.

Section 6.3 Instruments of Further Assurance. The Town shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such

instruments supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee all interests, revenues and receipts pledged hereby to the payment of the principal of and premium, if any, and interest on the Series 2022 Obligations in the manner and to the extent contemplated herein.

Section 6.4 Rights under Series 2022 Purchase Agreement. The Trustee may enforce all rights under the Series 2022 Purchase Agreement for and on behalf of the Holder, whether or not the Town is then in default hereunder.

Section 6.5 Protection of Lien. The Town shall not make or create or agree to permit to be made or created any assignment or lien on a parity with or having priority or preference over the assignment and lien hereof upon the interests granted hereby or any part thereof except as otherwise specifically provided in the Series 2022 Purchase Agreement. No obligation the payment of which is secured by property or revenues pledged hereunder shall be executed and delivered by the Town except as provided in the Series 2022 Purchase Agreement.

ARTICLE VII DEFAULT AND REMEDIES

Section 7.1 Events of Default. Each of the following is hereby declared an “Indenture Event of Default” hereunder:

(i) If payment of any installment of interest on the Series 2022 Obligation shall not be made in full when the same becomes due and payable;

(ii) If payment of the principal on the Series 2022 Obligation shall not be made in full when the same becomes due and payable;

(iii) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of all or any part of the interests pledged hereunder and such custody or control shall continue for more than 60 days;

(iv) If the Town shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions on its part to be performed as provided herein or in the Series 2022 Obligations and such default shall continue for 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Town by the Trustee, unless within such 30 days the Town shall have commenced and be diligently pursuing in good faith appropriate corrective action to the satisfaction of the Trustee but in no event shall such corrective action occur more than 60 days after such notice, the Trustee may give such notice in its discretion and shall give such notice at the written request of the Holder; or

(v) If any event of default provided by Section 7.1 of the Series 2022 Purchase Agreement occurs.

Section 7.2 Remedies and Enforcement of Remedies.

(a) Upon the occurrence and continuance of any Indenture Event of Default and in accordance with Article VII hereof and Article VII of the Series 2022 Purchase Agreement, the Trustee may, and upon the written request of the Holder, together with indemnification of the Trustee to its satisfaction therefor, shall, proceed forthwith to protect and enforce its rights and the rights of the Holder hereunder and under the Series 2022 Obligations by such suits, actions or proceedings as the Trustee, being advised by counsel, shall deem expedient, including but not limited to, an action for the recovery of any amounts due hereunder or for damages for the breach of this Indenture, and the Trustee may pursue any other remedy which the law affords, including the remedy of specific performance. The Trustee shall also have those remedies provided pursuant to Article VII of the Series 2022 Purchase Agreement, subject to any limitations on such remedies set forth in such Article VII.

(b) Regardless of the happening of an Indenture Event of Default, the Trustee, if requested in writing by the Holder shall, upon being indemnified to its satisfaction therefor, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient (i) to prevent any impairment of the security hereunder by any acts which may be unlawful or in violation hereof, or (ii) to preserve or protect the interests of the Holder, provided that such request is in accordance with law and the provisions hereof.

Section 7.3 No Acceleration. In no event shall the Trustee have the right to accelerate or cause to become immediately due and payable, or payable in advance of their scheduled maturity dates, any amounts due hereunder.

Section 7.4 Application of Revenues and Other Moneys After Default.

(a) During the continuance of an Indenture Event of Default all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee with respect thereto, be deposited in the Obligation Fund, and all amounts held by the Trustee hereunder shall be applied as follows; provided, that if the amount available shall not be sufficient to pay in full any amount or amounts then due, then to the payment thereof ratably in a manner consistent with Section 3.3 of the Purchase Agreement, according to the amounts due to the Persons entitled thereto, without any discrimination or preference:

First: To the payment of all installments of interest (including interest on amounts unpaid when due on the Series 2022 Obligations); and

Second: To the payment of the unpaid Principal Installments which shall have become due, whether at maturity or by call for redemption in the order of their due dates.

(b) Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for

application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal of the Series 2022 Obligation to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder until the Series 2022 Obligation shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

(c) Whenever all principal of and interest on the Series 2022 Obligation which has become due has been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid and the Obligation Fund contains the amounts then required to be credited thereto, any balance remaining shall be paid to the Town.

Section 7.5 Remedies Not Exclusive. No remedy by the terms hereof conferred upon or reserved to the Trustee or the Holder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute on or after the date hereof.

Section 7.6 Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) hereunder or under the Series 2022 Obligations may be enforced by the Trustee, without the possession of any of the Series 2022 Obligations or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding may be brought without the necessity of joining as plaintiffs or defendants the Holder.

Section 7.7 Termination of Proceedings. In case any proceeding taken on account of an Indenture Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Holder, then the Town, the Trustee and the Holder shall be restored to their former positions and rights hereunder, and all rights and powers of the Trustee and the Holder shall continue as if no such proceeding had been taken.

Section 7.8 Waiver of Event of Default.

(a) No delay or omission of the Trustee or of the Holder to exercise any right or power accruing upon any Indenture Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Indenture Event of Default or an acquiescence therein. Every power and remedy given by this Article may be exercised from time to time and as often as may be deemed expedient.

(b) The Trustee may waive in writing any Indenture Event of Default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions hereof, or before the completion of the enforcement of any other remedy hereunder.

(c) In case of any waiver by the Trustee of an Indenture Event of Default hereunder, the Town, the Trustee and the Holder shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other

Indenture Event of Default or impair any right consequent thereon. The Trustee shall not be responsible to anyone for waiving or refraining from waiving any Indenture Event of Default in accordance with this Section.

Section 7.9 Notice of Default.

(a) Within 30 days after (i) the occurrence of an Indenture Event of Default under Subsections 7.1(i) or (ii) of which the Trustee is deemed to have notice, or (ii) receipt by the Trustee of actual knowledge or written notice of an Indenture Event of Default under Subsections 7.1(iii), (iv) or (v), the Trustee shall, unless such Indenture Event of Default shall have theretofore been cured, give written notice thereof by first class mail to the Holder.

(b) The Trustee shall immediately notify the Town of (i) the occurrence of an Indenture Event of Default under Subsections 7.1(i) or (ii), and (ii) when the Trustee has received actual knowledge or written notice of an Indenture Event of Default under Subsections 7.1(iii), (iv) or (v).

Section 7.10 Limitation of Liability.

(a) Except for the payment of amounts pursuant to the Series 2022 Purchase Agreement when due and the performance of the other covenants and agreements of the Town contained in the Series 2022 Purchase Agreement and herein, the Town shall have no pecuniary obligation or liability to any of the other parties or to the Holder with respect to this Indenture or the terms, execution, delivery or transfer of the Series 2022 Obligations, or the distribution of applicable portions of the Purchase Price to the Holder by the Trustee.

(b) The Town shall not have any obligation or liability to any of the other parties or to the Holder with respect to the performance by the Trustee of any duty imposed upon it under this Indenture; nor shall the Trustee have any obligation or liability to any of the other parties or to the Holder with respect to the performance by the Town of any duty imposed upon it under this Indenture.

Section 7.11 Limitations on Remedies. It is the purpose and intention of this Article to provide rights and remedies to the Trustee and the Holder which may be lawfully granted, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Holder shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and, to the extent consistent with the provisions of this Indenture, by law.

**ARTICLE VIII
THE TRUSTEE**

Section 8.1 Certain Duties and Responsibilities.

(a) Except during the continuance of an Indenture Event of Default:

(i) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which are required by any provision hereof or of the Series 2022 Purchase Agreement, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture or the Series 2022 Purchase Agreement on their face.

(b) In case an Indenture Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent corporate indenture trustee would exercise or use under the circumstances.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct or breach of trust, except that:

(i) this subsection shall not be construed to limit the effect of subsection (a);

(ii) the Trustee shall not be liable for any error of judgment made in good faith and without negligence by a president or vice-president of the board of directors, the president or vice-president of the executive committee of the board of directors, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer or assistant trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers or, with respect to a particular matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith and without negligence in accordance with the direction of the Holder as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment properly to be done by it as

the Trustee, without prior assurance of indemnity, and in such case shall be entitled to reimbursement by the Town for all reasonable costs, expenses, attorneys' and other fees, and all other reasonable disbursements, including its own fees, and for all liability and damages suffered by the Trustee in connection therewith except for the Trustee's negligence, willful misconduct or breach of trust.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 8.2 Certain Rights of Trustee. Except as otherwise provided in Section 8.1:

(i) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, obligation, note or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) Any request or direction of the Town mentioned herein shall be sufficiently evidenced by a certificate of the Town Representative, and any action of the Mayor and Common Council of the Town may be sufficiently evidenced by a copy of a resolution certified by the Clerk or Assistant Clerk of the Town to have been duly adopted by the Mayor and Common Council of the Town and to be in full force and effect on the date of such certification and delivered to the Trustee.

(iii) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of the Town Representative.

(iv) The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(v) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Holder pursuant to this Indenture unless the Holder shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(vi) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, obligation, note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(vii) The Trustee may engage agents and attorneys to assist it in executing any of the trusts or powers hereunder or performing any duties hereunder and shall not be liable for the negligence or misconduct of such agents and attorneys so long as the Trustee exercises due care in the selection thereof.

(viii) The Trustee shall not be responsible for the recording or filing of any documents relating to the Series 2022 Purchase Agreement or this Indenture.

Section 8.3 Employment of Experts. The Trustee is hereby authorized to employ as its agents such attorneys at law, certified public accountants and recognized authorities in their fields (who are not employees of the Trustee), as it reasonably may deem necessary to assist it to carry out any of its obligations hereunder, and shall be reimbursed by the Town for all reasonable expenses and charges in so doing.

Section 8.4 Enforcement of Performance by Others. Except as provided in Section 8.1 or otherwise specifically provided herein, it shall not be the duty of the Trustee to see that any duties and obligations herein imposed upon the Town are performed.

Section 8.5 Right to and Take Certain Actions. It is understood and agreed that the Trustee engages in a general banking business, and no provision hereof or of the Series 2022 Purchase Agreement is to be construed to limit or restrict the right of the Trustee to engage in such business with the Town or the Holder. So engaging in such business shall not, in and of itself, and so long as the Trustee duly performs all of its duties as required hereby and by the Series 2022 Purchase Agreement, constitute a breach of trust on the part of the Trustee, but neither shall engaging in such business abrogate, alter or diminish any duty or obligation of the Trustee as trustee hereunder.

Section 8.6 Removal and Resignation of Trustee.

(a) The Trustee may resign with 30 days' notice from the trusts created hereby by giving written notice of the resignation to the Town and by mailing written notice of the resignation to the Holder at the close of business fifteen days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee.

(b) The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Town and signed by (i) the Town Representative or (ii) by or on behalf of the Holder. The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by an instrument signed by the Town or by any court of competent jurisdiction upon the application of the Town, or the Holder under this Indenture. Any removal shall not take effect until a successor Trustee shall have been appointed. In the event a successor Trustee has not been appointed and qualified within 60 days of the date notice of resignation or removal is given, the Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

(c) In the event of the resignation or removal of the Trustee or in the event the Trustee is dissolved or otherwise becomes incapable to act as the Trustee, the Town shall be entitled to appoint a successor Trustee acceptable to the Town.

(d) If the Holder objects to the successor Trustee so appointed by the Town and if such Holder designates another Person qualified to act as the Trustee, the Town shall then appoint as the Trustee the Person so designated by the Holder.

(e) Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall be a trust company or bank having the powers of a trust company as to trusts, qualified to do trust business in the State and having an officially reported combined capital, surplus, undivided profits and reserves aggregating at least \$200,000,000, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(f) Every successor Trustee howsoever appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Town an instrument in writing, accepting such appointment hereunder, and thereupon such successor Trustee, without further action, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, and such predecessor shall execute and deliver an instrument transferring to such successor Trustee all the rights, power and trusts of such predecessor. The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

(g) Each successor Trustee, not later than ten days after its assumption of the duties hereunder, shall mail a notice of such assumption to the Holder.

(h) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee without the execution or filing of any paper or any further act, provided such company shall be eligible as a successor Trustee under this Indenture.

Section 8.7 Proof of Claim. The Trustee shall have the right and power to take actions in the name and place of the Town or the Holder to make proof of claim in any proceeding, bankruptcy, reorganization or otherwise where proof of claim may be required. Any amount recovered as a result of any such claim, after payment of all fees (including reasonable attorneys' fees), costs, expenses and advances incurred by the Trustee or its agents in pursuing such claim, shall be for the benefit of the Holder.

Section 8.8 Trustee's Fees and Expenses.

(a) The Trustee shall be entitled to be paid from time to time reasonable compensation for all services rendered by it hereunder; to reimbursement upon request for all

reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith or willful misconduct or breach of trust; and to be indemnified by the Town, for, from and against any loss, liability or expense arising out of or in connection with the acceptance or administration of this trust or its duties hereunder. The Trustee's right to indemnity shall not extend to claims, suits and actions successfully brought against the Trustee for, or losses, liabilities or expenses incurred as a result of the Trustee's own negligence, bad faith, willful misconduct or breach of trust. In the event any action or proceeding is instituted or pending against the Trustee by reason of or in connection with the acceptance or administration of this trust or the Trustee's duties hereunder, the Town may, at its election, assume the defense of any such action or proceeding with counsel satisfactory to the Trustee. If any such action or proceeding includes any claims alleging the Trustee's own negligence, bad faith, willful misconduct or breach of trust, the Trustee shall reimburse the Town its expenses (including reasonable attorneys' fees), if any, of assuming the defense of such action or proceeding if it is determined by a final judgment of a court of competent jurisdiction that the Trustee is not entitled to be indemnified as authorized in this Section. Any settlement of any such action or proceeding shall not, of itself, create a presumption as to the merits of any claims alleging the Trustee's own negligence, bad faith, willful misconduct or breach of trust. The Trustee's rights to compensation, reimbursement and indemnity while serving as Trustee hereunder shall survive resignation or removal of the Trustee or discharge of this Indenture.

(b) Any provision hereof to the contrary notwithstanding, if the Town fails, within 30 days of receiving an itemized invoice and back-up documentation, to make any payment properly due the Trustee for its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Trustee) incurred in performance of its duties, the Trustee may reimburse itself from any surplus moneys on hand in any fund or account created pursuant hereto.

Section 8.9 Destruction of Series 2022 Obligations. Upon payment of or surrender to the Trustee for cancellation of any Series 2022 Obligation, the Trustee shall destroy such Series 2022 Obligation.

Section 8.10 Reports. The Trustee shall quarterly, or at such other intervals as the Trustee and the Town shall from time to time agree upon (but in no event more frequently than monthly), prepare and submit to the Town reports covering all moneys received and all payments, expenditures and investments made as the Trustee hereunder since the last previous such report.

Section 8.11 Recitals and Representations.

(a) The recitals, statements and representations contained herein, or in the Series 2022 Obligations (excluding the Trustee's execution on the Series 2022 Obligations or any recitals or representations concerning the Trustee or its powers) shall not be taken or construed as made by the Trustee, and the Trustee neither assumes nor shall be under any responsibility for the correctness of the same.

(b) The Trustee makes no representation as to, and is not responsible for, the validity or sufficiency hereof, of the Series 2022 Obligations, or the validity or sufficiency of insurance to be provided or, except as herein required, the filing or recording or registering of any document. The Trustee shall be deemed not to have made representations as to the security afforded hereby or hereunder or as to the validity or sufficiency of such document. The Trustee shall not be concerned with or accountable to anyone for the use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof. Except as to defaults described in Subsections 7.1(i) and (ii) of which the Trustee is deemed to have notice, the Trustee shall have no duty of inquiry with respect to any default or Events of Default described herein without actual knowledge of or receipt by the Trustee of written notice of a default or an Indenture Event of Default from the Holder.

**ARTICLE IX
SUPPLEMENTS TO INDENTURE AND AMENDMENTS TO
SERIES 2022 PURCHASE AGREEMENTS**

Section 9.1 Supplements not Requiring Consent of Holder. The Town acting through the Town Representative and the Trustee may, without the consent of or notice to the Holder, enter into one or more supplements for one or more of the following purposes:

(i) To cure any ambiguity or formal defect or omission in this Indenture or to correct or supplement any provision in this Indenture that is inconsistent with any other provision in this Indenture, or to make any other provisions with respect to matters or questions arising under this Indenture provided such action shall, in the Opinion of Counsel delivered to the Trustee under Section 9.3(a), not materially adversely affect the interests of the Holders;

(ii) To grant or confer upon the Holder any additional rights, remedies, powers or authority that may lawfully be granted or conferred upon it;

(iii) To secure additional revenues or provide additional security or reserves for payment of the Series 2022 Obligations or to add a Qualified Reserve Fund Instrument and necessary, related provisions therefor;

(iv) To comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder;

(v) To provide for the appointment of a successor trustee pursuant to the terms of Section 8.6; and

(vi) To preserve the exclusion of the interest on the Series 2022 Obligations from gross income for purposes of federal or State income taxes and to preserve the power of the Town to continue to incur obligations (specifically not limited to the Series 2022 Obligations authorized hereby) the interest on which is likewise exempt from federal and State income taxes.

Section 9.2 Supplements Requiring Consent of Holder.

(a) Other than supplements referred to in Section 9.1 and subject to the terms and provisions and limitations contained in this Article and not otherwise, the Holder shall have the right, from time to time, anything contained herein to the contrary notwithstanding, to consent to and approve the execution by the Town and the Town Representative and the Trustee of such supplement as shall be deemed necessary and desirable by the Town and the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular respect, any of the terms or provisions contained herein.

(b) If at any time the Town shall request the Trustee to enter into a Supplement pursuant to this Section, the Trustee shall, upon being satisfactorily and specifically indemnified by the Town with respect to expenses with respect to such Supplement, cause notice of the proposed execution of such Supplement to be mailed by first class mail, postage pre-paid, to the Holder. Such notice shall briefly set forth the nature of the proposed Supplement and shall state that copies thereof are on file at the office of the Trustee for inspection by all Holders.

(c) If within such period as shall be prescribed by the Town, following the mailing of such notice, the Trustee shall receive an instrument purporting to be executed by the Holder which instrument shall refer to the proposed Supplement described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice as on file with the Trustee, thereupon, but not otherwise, the Trustee and the Town may execute such Supplement in substantially such form, without liability or responsibility to the Holder.

(d) If the Holder shall have consented to and approved the execution of such Supplement as herein provided, the Holder shall not have any right to object to the execution thereof, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Town from executing the same or from taking any action pursuant to the provisions thereof.

Section 9.3 Execution and Effect of Supplements.

(a) In executing any Supplement permitted by this Article, the Trustee and the Town shall be entitled to receive and to rely upon an Opinion of Counsel stating that the execution of such Supplement is authorized or permitted hereby. The Trustee may but shall not be obligated to enter into any such Supplement which affects the Trustee's own rights, duties or immunities.

(b) Upon the execution and delivery of any Supplement in accordance with this Article, the provisions hereof shall be modified in accordance therewith and such Supplement shall form a part hereof for all purposes and the Holder shall be bound thereby.

(c) Any Series 2022 Obligation executed and delivered after the execution and delivery of any Supplement in accordance with this Article may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such Supplement. If the Trustee shall so determine, upon receipt of Special Counsel's Opinion, a new

Series 2022 Obligation so modified as to conform in the opinion of the Trustee to any such Supplement may be executed and delivered by the Trustee in exchange for and upon surrender of the Series 2022 Obligation then Outstanding.

Section 9.4 Amendments to Series 2022 Purchase Agreement Not Requiring Consent of Holder. The Trustee may, without the consent of or notice to the Holder consent to and join with the Town in the execution and delivery of any amendment, change or modification of the Series 2022 Purchase Agreement as may be required to cure any ambiguity or formal defect or omission therein or to correct or supplement any provision therein which may be inconsistent with any other provision therein, or to make any other provisions with respect to matters or questions arising thereunder provided such action shall, in the opinion of counsel delivered to the Trustee under this Section, not materially adversely affect the interests of the Holder, to add a Qualified Reserve Fund Instrument so long as any payments with regard to the new Qualified Reserve Fund Instrument are paid no sooner, or in an amount greater, than amounts required to be paid pursuant to Section 3.3(iv) of the Purchase Agreement, to preserve the exclusion of the interest on the Series 2022 Obligations from gross income for purposes of federal or State income taxes and to preserve the power of the Town to continue to incur bonds or other obligations (specifically not limited to the Series 2022 Obligations authorized hereby) the interest on which is likewise exempt from federal and State income taxes in connection with any other change therein, which in the opinion of the Trustee will not materially adversely affect the interests of the Holder or, in the opinion of the Trustee, the Trustee. In executing any amendment to the Series 2022 Purchase Agreement, the Trustee shall be entitled to receive and rely on an Opinion of Counsel stating that such amendment is authorized or permitted under this Indenture and under the Series 2022 Purchase Agreement.

Section 9.5 Amendments to Series 2022 Purchase Agreement Requiring Consent of Holder.

(a) Except for amendments, changes or modification to the Series 2022 Purchase Agreement referred to in Section 9.4 hereof and subject to the terms and provisions and limitations contained in this Article and not otherwise, the Trustee may consent to and join with the Town in the execution and delivery of any amendment, change or modification to the Series 2022 Purchase Agreement only upon the consent of the Holder, given as provided in this Section.

(b) If at any time the Town shall request the consent of the Trustee to any such amendment, change or modification to the Series 2022 Purchase Agreement, the Trustee shall, upon being satisfactorily indemnified by the Town with respect to expenses, cause notice of the proposed amendment, change or modification to be given in the same manner as provided in Section 9.2 with respect to Supplements hereto. Such notice shall briefly set forth the nature of the proposed amendment, change or modification and shall state that copies thereof are on file at the office of the Trustee for inspection by the Holder.

(c) If the consent to and approval of the execution of such amendment, change or modification is given by the Holder within the time and in the manner provided by Section 9.2 with respect to Supplements hereto, but not otherwise, such amendment, change or modification may be consented to, executed and delivered upon the terms and conditions and with like binding effect upon the Holder as provided in Section 9.2 and Section 9.3 with respect to Supplements hereto.

ARTICLE X
SATISFACTION AND DISCHARGE

Section 10.1 Discharge.

(a) If payment of all principal of and interest on all of the Series 2022 Obligations in accordance with their terms and as provided herein and in Section 3.5 of the Series 2022 Purchase Agreement is made, or is provided for in accordance with this Article, and if all other sums, if any, payable hereunder shall be paid, then the liens, estates and security interests granted hereby shall cease. Thereupon, upon the request of the Town, and upon receipt by the Trustee of an Opinion of Counsel addressed to the Town and the Trustee stating that all conditions precedent to the satisfaction and discharge of the lien hereof have been satisfied, the Trustee shall execute and deliver proper instruments acknowledging such satisfaction and discharging the lien hereof and the Trustee shall transfer all property held by it hereunder, other than moneys or obligations held by the Trustee for payment of amounts due or to become due on the Series 2022 Obligations and to the Town or such other Person as may be entitled thereto as their respective interests may appear. Such satisfaction and discharge shall be without prejudice to the rights of the Trustee thereafter to charge and be compensated or reimbursed for services rendered and expenditures incurred in connection herewith.

(b) The Town may at any time surrender to the Trustee for cancellation any Series 2022 Obligations previously executed and delivered which the Town may have acquired in any manner whatsoever and such Series 2022 Obligations upon such surrender and cancellation shall be deemed to be paid and retired.

Section 10.2 Providing for Payment of Series 2022 Obligations.

(a) Payment of all or any part of the Series 2022 Obligation may be provided for by the deposit with the Trustee or a Depository Trustee of moneys or Defeasance Obligations which are not redeemable in advance of their maturity dates. Amounts in the Debt Service Reserve Account may be included as part of such deposit only if all of the Series 2022 Obligations are to be defeased. The moneys and the maturing principal and interest income on such Defeasance Obligations, if any, shall be sufficient, as evidenced by a certificate of an independent nationally recognized certified public accountant or firm of such accountants acceptable to the Trustee or such Depository Trustee, to pay when due such principal or redemption price of and interest on such Series 2022 Obligations. The moneys and Defeasance Obligations shall be held by the Trustee or such Depository Trustee irrevocably in trust for the Holder solely for the purpose of paying the principal or redemption price of and interest on such Series 2022 Obligations as the same shall mature, come due or become payable upon redemption, and, if applicable, upon simultaneous direction, expressed to be irrevocable to the Trustee or Depository Trustee as to the dates upon which any such Series 2022 Obligations are to be redeemed prior to their respective maturity dates.

(b) Notwithstanding the foregoing, no deposit under Subsection (a) above shall be deemed a payment of such Series 2022 Obligation as aforesaid until the earlier of: (i) proper notice of redemption of such portion of the Series 2022 Obligations shall have been given in accordance with the provisions of Section 3.4 or, in the event said portion of the Series 2022

Obligation is not to be redeemed within the next succeeding 60 days, until the Town shall have given the Trustee irrevocable instructions in form satisfactory to the Trustee, to notify, as soon as practicable, the Holder of the Series 2022 Obligation in accordance with Section 3.4, that the deposit required by Subsection (a) has been made with the Trustee and that said portion of the Series 2022 Obligation is deemed to have been paid in accordance with this Article and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption price, if any, on said portion of the Series 2022 Obligation, plus interest thereon to the due date or redemption date thereof or (ii) the maturity of the Series 2022 Obligation.

(c) If payment is so provided for, the Trustee or the Depository Trustee shall mail a notice so stating to the Holder.

(d) The portion of the Series 2022 Obligation, the payment of which has been provided for in accordance with this Section, shall no longer be deemed Outstanding hereunder or secured hereby. The obligation in respect thereof shall nevertheless continue but the Holder shall thereafter be entitled to payment only from the moneys or Defeasance Obligations deposited with the Trustee or the Depository Trustee to provide for such payment.

(e) No portion of the Series 2022 Obligation may be so provided for if, as a result thereof or of any other action in connection with which the provisions for payment of such Series 2022 Obligation is made, the interest payable on any Series 2022 Obligation is made includible in gross income for purposes of federal income taxes. The Trustee and the Town may rely upon a Special Counsel's Opinion to the effect that the provisions of this paragraph will not be breached by so providing for the payment of any Series 2022 Obligations.

Section 10.3 Payment of Series 2022 Obligations After Discharge. Notwithstanding the discharge of the lien hereof as in this Article provided, the Trustee shall nevertheless retain such rights, powers and duties hereunder as may be necessary and convenient for the payment of amounts due or to become due on the Series 2022 Obligations and the replacement of Series 2022 Obligations as provided herein. Nevertheless, any moneys held by the Trustee for the payment of the principal of or interest on any Series 2022 Obligation remaining unclaimed for two years after the same shall become due and payable at maturity by declaration as provided herein, shall then be paid to the Town and the Holder shall thereafter be entitled to look only to the Town for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease. The obligations of the Trustee under this Section shall be subject, however, to the requirements of any applicable law regarding the disposition of unclaimed property.

ARTICLE XI MISCELLANEOUS

Section 11.1 Evidence of Acts of Holder.

(a) Any request, direction, consent or other instrument provided hereby to be signed and executed by the Holder may be in any number of concurrent writings of similar tenor and may be signed or executed by the Holder in person or by agent appointed in writing. Proof of

the execution of any such request, direction or other instrument or of the writing appointing any such agent, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Trustee and the Town, with regard to any action taken by them, or either of them, under such request or other instrument, namely the fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the Person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution.

(b) Nothing in this Section shall be construed as limiting the Trustee to the proof herein specified, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient.

Section 11.2 Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Series 2022 Obligations is intended or shall be construed to give to any Person other than the parties hereto, the Town and the Holder any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained.

Section 11.3 Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof, or the Series 2022 Obligations executed and delivered pursuant hereto, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

Section 11.4 Holidays. When the date on which principal of or interest on the Series 2022 Obligation is due and payable is not a Business Day, payment may be made on Series 2022 Obligations presented at such place of payment on the next Business Day with effect as though payment were made on the due date, and, if such payment is made, no additional interest shall accrue from and after such due date. When any other action is provided herein to be done on a day named or within a time period named, and the day or the last day of the period falls on a day other than a Business Day, it may be performed on the next ensuing Business Day with effect as though performed on the appointed day or within the specified period.

Section 11.5 Governing Law. This Indenture and the Series 2022 Obligations are contracts made under the laws of the State and shall be governed and construed in accordance with such laws.

Section 11.6 Notices.

(a) Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first class mail, postage prepaid and addressed as follows:

(i) If to the Trustee, addressed to it at _____, Attention: Global Corporate Trust;

(ii) If to the Holder addressed to it at _____; and

(iii) If to the Town, addressed to it at 22358 South Ellsworth Road, Queen Creek, Arizona 85142, Attention: Town Manager.

(b) The parties listed above may from time to time by notice in writing to the others designate a different address or addresses for notices hereunder.

Section 11.7 Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which together shall constitute one instrument.

Section 11.8 Waiver of Personal Liability. No director, officer, agent, financial advisor, counsel or employee of the Town shall be individually or personally liable for the payment of the principal of or interest on the Series 2022 Obligations; but nothing herein contained shall relieve any such director, officer, agent, financial advisor, counsel or employee from the performance of any official duty provided by law.

Section 11.9 Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns subject to the limitations contained herein. Except as provided herein, the trust under this Indenture shall not be assigned to any other person, corporation, partnership or trustee unless the Trustee is required by law to divest, or does divest, itself of its trust department or unless the Trustee shall sell or assign substantially all of its corporate trust business in which event the trust hereunder shall be continued by the Trustee's successor in interest.

Section 11.10 Certain Statutory Notices.

(a) To the extent applicable by provision of law, the Trustee acknowledges that this Indenture is subject to cancellation pursuant to Section 38 511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein and which provides that the Town may within three (3) years after its execution cancel any contract (including this Indenture) without penalty or further obligation made by the Town 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 of the contract is in effect, an employee or agent 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. The Trustee shall take all such actions as possible to avoid violation of such statute.

(b) To the extent applicable under Section 41 4401, Arizona Revised Statutes, as amended, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the E verify requirements under Section 23 214(A), Arizona Revised Statutes, as amended. The breach by the Trustee of the foregoing shall be deemed a material breach of this Indenture and may result in the termination of the services of the Trustee by the Town. The Town retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the above-mentioned warranty. The Trustee shall keep such papers and records open for random inspection during normal business hours by the Town. The Trustee shall cooperate with the random inspections by the Town including

granting the Town entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

(c) Pursuant to Section 35-393, Arizona Revised Statutes, et seq., the Trustee hereby certifies it is not currently engaged in, and for the duration hereof shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Town determines that the Trustee’s certification above is false or that it has breached such agreement, the Town may impose remedies as provided by law.

Section 11.11 Facsimile Instructions. The Trustee shall accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (a) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

Section 11.12 Force Majeure. The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, “acts of God”, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other like occurrences beyond the control of the Trustee; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

* * *

[Signature page follows.]

IN WITNESS WHEREOF, the Town has caused these presents to be signed in the name and on its behalf by its duly authorized officer, and, to evidence its acceptance of the trusts hereby created, the Trustee has caused these presents to be signed in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

_____, as Trustee

By.....
Authorized Representative

TOWN OF QUEEN CREEK, ARIZONA

By.....
Mayor

ATTEST:

.....
Town Clerk

EXHIBIT

(FORM OF SERIES 2022 OBLIGATION)

THIS OBLIGATION MAY ONLY BE TRANSFERRED BY THE REGISTERED OWNER HEREOF IN ACCORDANCE WITH THE TRANSFER RESTRICTIONS SET FORTH IN ARTICLE II OF THE HEREINAFTER DEFINED INDENTURE

**SENIOR LIEN UTILITY SYSTEM REVENUE REFUNDING OBLIGATION, SERIES 2022,
EVIDENCING A PROPORTIONATE INTEREST OF THE HOLDER HEREOF
IN INSTALLMENT PAYMENTS OF THE PURCHASE PRICE TO BE PAID
BY THE TOWN OF QUEEN CREEK, ARIZONA, PURSUANT TO A
SERIES 2022 SENIOR LIEN UTILITY SYSTEM REVENUE PURCHASE AGREEMENT,
DATED AS OF MAY 1, 2022
AS ASSIGNED TO**

....., AS TRUSTEE

No:

DENOMINATION: \$ ____,000

INTEREST RATE:

MATURITY DATE:

DATED:

.....%

July 1, 20__

May __, 2022

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ AND 00/100 DOLLARS

The registered owner identified above, or registered assigns, as the registered owner of this Senior Lien Utility System Revenue Refunding Obligation, Series 2022 (this “*obligation*”), is the owner of an undivided proportionate interest in the right to receive certain installments of the “Purchase Price” pursuant to that certain Series 2022 Senior Lien Utility System Revenue Purchase Agreement, dated as of May 1, 2022 (the “*Purchase Agreement*”), by and between, a national banking association authorized to exercise trust powers in the State of Arizona, in its separate capacity as seller (the “*Seller*”), and the Town of Queen Creek, Arizona, a municipal corporation of the State of Arizona, as purchaser (the “*Town*”), which installments and certain other rights and interests under the Series 2022 Purchase Agreement have been assigned to, in its separate capacity as trustee (together with any successor thereto, the “*Trustee*”), pursuant to that certain Series 2022 Senior Lien Utility System Revenue Obligation Indenture, dated as of May 1, 2022 (the “*Indenture*”), by and between the Town and the Trustee.

The registered owner is entitled to receive, subject to the terms of the Purchase Agreement, on the maturity date set forth above, the principal amount set forth above, representing the portion of the Purchase Price denominated as principal coming due on the maturity date set forth above, and to receive on July 1, 2022, and semiannually on January 1 and July 1 of each year thereafter, until payment in full of said principal, the registered owner’s proportionate share of the installments of the Purchase Price denominated as interest coming due during the six-month period

(or portion thereof) immediately preceding each of such dates; provided that the first installment shall be for interest from the date of initial execution and delivery to July 1, 2022. Said installments designated as interest are the result of the multiplication of the aforesaid portion of such installments designated as principal by the rate per annum set forth above. (Any payment due hereon which shall not be paid when due shall bear interest at the rate of interest set forth above, compounded semiannually, from the date such payment is due until the payment is made.)

Principal of and interest on this obligation are payable in lawful money of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts. Payments of the portion of the installments of the Purchase Price denominated as principal, when due, and interest thereon (including as a result of redemption) will be made by check mailed by the Trustee to the address of the person entitled thereto specified by the registered owner; *provided, however*, that the Indenture provides that upon certain circumstances such payments may, at the direction of the registered owner, be made by wire transfer of immediately available funds; *provided further, however*, that the final payment of principal and interest, when due, will be paid upon surrender of this obligation at the designated corporate trust office of the Trustee.

This obligation is one of a series, limited in aggregate original principal amount of \$____,000 (the "*Series 2022 Obligations*"), executed and delivered under the Indenture which are limited, special revenue obligations, payable solely from the sources (particularly the Purchase Agreement) and in the manner described in the Indenture, in order to acquire certain property comprising the water and sewer system of the Town. The payments to be made by the Town pursuant to the Purchase Agreement are to be in an amount sufficient to make the payments due on the Series 2022 Obligations, and payments by the Town under the Purchase Agreement are to be made from, and secured by a pledge of, certain revenues, proceeds and receipts to be derived by the Town from such system. Under the circumstances set out in the Purchase Agreement, additional obligations on a parity therewith have been and may be incurred by the Town payable from such revenues. For a more complete statement of the provisions made to secure payment of the Series 2022 Obligations, the revenues from and conditions under which this obligation is payable, statements of the terms under which the Purchase Agreement may be modified and the general covenants and provisions pursuant to which this obligation is issued, reference is made to the Indenture.

This obligation shall not constitute a debt of the Town, the State of Arizona or any political subdivision thereof within the meaning of any provision of the Constitution or laws of the State of Arizona and shall not constitute or give rise to a pecuniary liability of the Town, the State or any other political subdivision thereof or a charge against the general credit or taxing powers of any of them. This obligation and the interest hereon are enforceable exclusively from the revenues pledged thereto in the Purchase Agreement, and the registered owner shall not have the right to compel any exercise of the taxing power of the Town to pay this obligation or the interest hereon.

The Series 2022 Obligations are subject to redemption, in whole or in part, on any date on or after _____, 20__, in any principal amount and in any order of maturity, all as directed by the Town, by payment of the principal amount of each Series 2022 Obligation to be redeemed plus interest accrued to the date fixed for redemption, without premium.

The Series 2022 Obligations shall be redeemed on July 1 in the years and in the principal amounts set forth below, at a redemption price equal to the principal amount thereof, without premium, plus the interest accrued to the date of redemption:

Year	Principal Amount
------	------------------

(maturity)

Whenever Series 2022 Obligations are purchased, redeemed (other than because of mandatory redemption) or delivered for cancellation, the principal amount represented thereby so retired shall satisfy and be credited against the mandatory prepayment requirements therefor in any order specified by the Town.

Notice of redemption shall be mailed as provided in the Indenture.

The registered owner shall have no right to enforce the provisions of the Indenture or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

The Indenture and other documents referred to therein may be modified or amended to the extent permitted by and as provided therein. Certain amendments, modifications or changes which would affect the rights of the registered owner may be made only with the consent of the registered owner, as provided in the Indenture. However, as to certain other amendments which will not materially adversely affect the interests of the registered owner, no consent shall be required.

The Series 2022 Obligations are and shall be executed and delivered only in fully registered form. This obligation is transferable by the registered owner of this obligation in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided for in the Indenture and upon surrender and cancellation of this obligation. Upon such transfer a new Series 2022 Obligation for the remaining aggregate principal amount payable at maturity will be executed and delivered to the transferee in exchange.

The Trustee may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture in connection with any transfer.

The Trustee shall treat the registered owner as the absolute owner for the purpose of receiving payment as herein provided and for all other purposes and shall not be affected by any notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the execution and delivery of this obligation have existed, have happened and have been performed in due form, time and manner as required by law.

IN TESTIMONY WHEREOF, this obligation has been executed and delivered by the Trustee, acting pursuant to the Indenture.

Date:.....

....., as Trustee

By.....
Authorized Representative

ASSIGNMENT

The following abbreviations, when used in the inscription on the face of the within obligation, shall be construed as though they were written out in full according to applicable laws or regulations:

- | | |
|--|---|
| TEN COM -- as tenants in common | UNIF GIFT/TRANS MIN ACT --
(Cust.) |
| TEN ENT -- as tenants by the entireties | Custodian for Under Uniform
(Minor) |
| JT TEN -- as joint tenants with right of survivorship and not as tenants in common | Gifts/Transfers to Minors Act of
(State) |

Additional abbreviations may also be used, though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto
 (Please Print or Typewrite Name, Address and Social Security Number or other Federal Tax Identification Number of Transferee) the within obligation and all rights thereunder, and irrevocably constitutes and appoints attorney to transfer the within obligation on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

Signature Guaranteed:

.....
 (Signature guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee).

.....
 Notice: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within obligation in every particular without alteration or enlargement or any change whatsoever.

(END OF FORM OF SERIES 2022 OBLIGATION)



TOWN OF QUEEN CREEK, ARIZONA
Senior Lien Utility System Revenue Refunding Obligations, Series 2022

REQUEST FOR FUNDING (“RFF”)
Due: On or Before April 27, 2022

INTRODUCTION

The Town of Queen Creek, Arizona (the “Town”) is seeking proposals for the direct purchase of approximately \$21.5 million Senior Lien Utility System Revenue Obligations, Series 2022 (the “2022 Obligations”) to pay for refinancing the Town’s 2008 Water Infrastructure Finance Authority (“WIFA”) Loan outstanding in the principal amount of \$20,971,558.90 (the “2008 WIFA Loan to be Refunded”), as more fully described herein, and to pay for the costs of execution and delivery of the 2022 Obligations.

This Request for Funding is accompanied by a separate attachment containing the resolution authorizing issuance of the 2022 Obligations (the “Resolution”), a draft Series 2022 Senior Lien Utility System Revenue Indenture and draft 2022 Senior Lien Utility System Revenue Purchase Agreement (collectively, the “Legal Documents”), as described herein. The Resolution is expected to be approved by the Mayor and Town Council on April 20, 2022.

This RFF does not commit the Town to pay any costs incurred by any proposer in the submission of a proposal or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the services to be furnished under the RFF.

Entities making proposals pursuant to this RFF must do their own investigation about the security for and source of payment of the 2022 Obligations and other matters they deem necessary.

KEY DATES AND CONTACTS

RFF Due Date: Proposals are due no later than **2:00 p.m. Mountain Standard Time on April 27, 2022.**

Final Credit Approval and Rate Lock: No later than **2:00 p.m. Mountain Standard Time on April 29, 2022.**

Closing: Closing is scheduled for **May 11, 2022.**

RFF Questions/Clarification: Clarifications on the RFF and questions regarding the preparation of the proposal should be directed to the Town’s Financial Advisor **Jim Stricklin**, Wedbush Securities Inc. (jim.stricklin@wedbush.com or **480.778.8594**) **no later than 2:00 p.m. on April 19, 2022.** A response in the form of an addendum to the RFF will be provided to all parties if a substantive clarification is in order.

Due diligence/credit related questions should be directed to **Scott McCarty**, Chief Financial Officer (scott.mccarty@queencreekaz.gov) or **480.358.3170**). A response in the form of an addendum to the RFF will be provided to all parties if a substantive clarification is in order.

Questions regarding the legal structure of the transaction should be directed to the Town’s Special Counsel, **Paul Gales**, Greenberg Traurig, LLP (galesp@gtlaw.com or **602.445.8404**). A response in the form of an addendum to the RFF will be provided to all parties if a substantive clarification is in order.



SUBMITTAL

Proposals for funding, including Exhibit A – Bid Form, must be submitted electronically on or before 2:00 p.m. Mountain Standard Time on April 27, 2022 to Scott McCarty (scott.mccarty@queencreekaz.gov) and Jim Stricklin (jim.stricklin@wedbush.com).

AWARD

The Town may select the entity submitting a successful proposal on a preliminary basis to negotiate final terms, conditions and financing documents.

Rejection of Proposals:

The Town will choose a an entity based on the proposal that provides the most favorable terms to the Town. The Town reserves the right to negotiate terms and provisions with any or all respondents in determining its award. The Town also reserves the right to reject any or all responses to the RFF or to waive any irregularities if found to be in the Town’s best interest to do so. At the Town’s discretion, litigation between the Town and a Proposer may be cause for proposal rejection, regardless of when that litigation comes to its attention and regardless how the Proposer’s proposal may have been scored. Proposals may also be rejected if they use subcontractors or subconsultants who are involved in litigation with the Town.

Cancellation:

The Town reserves the right to modify, revise or cancel this RFF. Receipt and evaluation of proposals do not obligate the Town to award a contract.

THE 2022 OBLIGATIONS

Purpose:

The 2022 Obligations will be executed and delivered to refinance the Town’s 2008 WIFA Loan to be Refunded and to pay for the costs of execution and delivery of the 2022 Obligations.

Structure:

The Trustee will be authorized to execute and deliver the 2022 Obligations to the lender that provides the most favorable terms to the Town (the “Purchaser”) pursuant to the provisions of an obligation indenture (the “2022 Indenture”) between the Town and _____ (the “Trustee”). The 2022 Obligations will be all the interests in the payments due from the Town to the Trustee pursuant to an installment purchase agreement between the Town and the Trustee (the “Purchase Agreement”).

Security and Pledge:

The Town’s outstanding WIFA loans, the 2022 Obligations and any additional obligations (the “Additional Parity Obligations”, and collectively, the “Parity Obligations”) will be payable from and secured by a lien on revenues including all income, moneys and receipts to be received by the Town, directly or indirectly, from the ownership, use or operation of the water and wastewater system (collectively, the “Utility System”) and including investment income, less all operation and maintenance expenses of the Utility System (the “Net Revenues”). The pledge of Net Revenues for the payment of the Parity Obligations will be a paramount and first pledge and lien of the Net Revenues. The 2022 Obligations will be on a parity of lien with the Town’s Parity Obligations currently outstanding, net of the 2008 WIFA Loan to be Refunded, in the principal amount of \$97,662,718, along with Additional Parity Obligations in the amount of \$46 million* WIFA Drinking Water Loan, Series 2022 (the “WIFA DW Loan 2022”) and \$10 million* WIFA Clean Water Loan, Series 2022 (the “WIFA CW Loan 2022 and, along with the WIFA DW Loan 2022,” the “New Money WIFA Loans”) expected to close on May 13, 2022. See “Utility System Indebtedness – Senior Lien Utility Revenue Obligations.”

None of the Parity Obligations constitute a debt or a pledge of the full faith and credit of the Town, the State or any political subdivision thereof for constitutional or statutory purposes. The 2022 Obligations do not obligate the Town to levy



or pledge any form of ad valorem or other taxes. The 2022 Obligations are limited obligations of the Town secured solely by Net Revenues and otherwise as provided in the Resolution and the Purchase Agreement.

Information regarding the Town's Utility System can be found in "Statement of Utility System Operations" and "Estimated and Projected Debt Service Requirements and Estimated Debt Service Coverage". The information in such tables has been obtained from the Town and is believed to be reliable, but such information is not guaranteed as to accuracy or completeness by the Financial Advisor. The presentation of such information is intended to show recent historical information and, except as expressly stated otherwise, is not intended to indicate future or continuing trends. The information contained in such tables is subject to change without notice. No representation is made that the past experience shown by such information will necessarily continue or be repeated in the future.

Contingent Debt Service Reserve Fund

The 2022 Indenture establishes the Debt Service Reserve Fund within the Obligations Fund for the benefit of the 2022 Obligations. The Purchase Agreement provides that no deposit needs to be made to the Debt Service Reserve Fund unless after any Fiscal Year the Net Revenues are less than 150 percent of the Parity Lien Test Debt Service. "Parity Lien Test Debt Service" is the highest aggregate Principal Requirement and Interest Requirement of all Parity Obligations then Outstanding, including the Additional Parity Obligations to be issued, to fall due and payable in the current or any future Bond Year. On the January 15 following the Fiscal Year of the Town in which the Net Revenues are less than 150 percent of the Parity Lien Test Debt Service, and each January 15 thereafter, the Town will deposit into the Debt Service Reserve Fund an amount equal to one-fifth (1/5) of the amount required to fund and maintain the Debt Service Reserve Fund in an amount equal to the Reserve Requirement until such time as the amount on deposit in the Debt Service Reserve Account equals the Reserve Requirement.

Replacement Reserve Fund

The Town shall either spend or maintain a replacement reserve (the "Replacement Reserve") equal to 20% of the annual debt service payments due on the 2022 Obligations deposited semi-annually. The Replacement Reserve shall be used for one or more of the following purposes: (i) the acquisition of new, or the replacement of obsolete or worn out, machinery, equipment, furniture, fixtures or other personal property for the System provided that the property is depreciable; (ii) the performance of repairs with respect to the System which are of an extraordinary and non-recurring nature provided that the property is depreciable; and/or (iii) the acquisition or construction of additions to or improvements, extensions or enlargements to, or remodeling of, the System provided that the property is depreciable (collectively, the "Permitted Uses").

When all amounts payable by the Town under the 2022 Obligations have become due, and all such amounts have been paid, and after any Outstanding Parity Obligations have been paid, any amounts set aside for the Replacement Reserve will become available to the Town for general use.

Rate Covenant:

The Town will covenant and agree in the Purchase Agreement to establish and maintain rates, fees, and charges for all services supplied by the Utility System to provide Net Revenues fully sufficient, after making reasonable allowance for contingencies and errors in estimates to produce Net Revenues in each Fiscal Year equal to the sum of (i) 120 percent of the aggregate of the debt service or comparable payments payable on the Parity Obligations in such Fiscal Year, and (ii) one hundred percent of the aggregate of the debt service or comparable payments, separately payable and secured on a basis subordinate to the Parity Obligations by the Net Revenues.

Additional Parity Obligations:

Pursuant to the provisions of the Purchase Agreement, the Town may, in the future, incur Additional Parity Obligations if there is not any Event of Default upon the incurrence thereof and the Net Revenues for the completed Fiscal Year immediately preceding the incurrence of such Additional Parity Obligations have been at least equal to the sum of (i) 120 percent of the highest year's debt service or comparable payments on the Parity Obligations including the Additional Parity Obligations then to be incurred, and (ii) not less than one hundred percent of the aggregate of amounts payable in such Fiscal Year and secured on a subordinate basis by the Net Revenues.



The Town does not expect to incur any Additional Parity Obligations other than the New Money WIFA Loans in the next 12 months.

Subordinate Lien Obligations:

The Purchase Agreement does not prohibit the issuance or incurrence by the Town of obligations payable from Net Revenues on a basis subordinate to the Senior Obligations. The Town currently has subordinate lien obligations outstanding in the principal amount of \$18,562,482. The Town has no present plans to issue or incur any additional subordinate lien obligations.

PROPOSALS

General:

1. **Principal Amount:** Approximately \$21.5 million*;
2. **Interest Rate and Structure:** Fixed rate with level payments beginning in fiscal 2022 through 2037 (Alternative I) or through 2038 (Alternative II);
3. **Amortization:** Alternative I – 15 years and 2 months; principal will be paid annually July 1, 2022 through July 1, 2037 and
 Alternative II – 16 years and 2 months; principal will be paid annually July 1, 2022 through July 1, 2038;
4. **Average Life:** Alternative I – Approximately 8.2 years and Alternative II – Approximately 8.8 years;
5. **Dated/Closing Date:** May 11, 2022;
6. **Interest Payment Dates:** Interest will be payable on July 1, 2022 and on each January and July thereafter until maturity;
7. **Bank Qualification:** The 2022 Obligations is not bank qualified; and
8. **Tax Status:** Special Counsel Greenberg Traurig, LLP will, at closing, provide an opinion as to the tax-exempt status of interest on the 2022 Obligations for federal and State of Arizona income tax purposes and as to the validity of the 2022 Obligations under State law.

Proposal Content:

Proposals must address and/or acknowledge each of the following items:

1. **Interest Rate Alternatives:**

Alternative I: Final Maturity July 1, 2037

Alternative II: Final Maturity July 1, 2038

2. **Maturity/Redemption Schedules*:**

The repayment schedules shown on the next page must be used as the basis for establishing Interest Rate Alternatives I & II:

* Subject to change.



Alternative I

Payment Date (July 1)	Principal Amount	Payment Date (July 1)	Principal Amount
2022	\$1,187,000	2030	\$1,342,000
2023	1,091,000	2031	1,382,000
2024	1,124,000	2032	1,423,000
2025	1,157,000	2033	1,466,000
2026	1,192,000	2034	1,510,000
2027	1,228,000	2035	1,555,000
2028	1,265,000	2036	1,602,000
2029	1,303,000	2037(a)	1,651,000

(a) Maturity.

Alternative II

Payment Date (July 1)	Principal Amount	Payment Date (July 1)	Principal Amount
2022	\$1,142,000	2030	\$1,238,000
2023	990,000	2031	1,279,000
2024	1,022,000	2032	1,320,000
2025	1,055,000	2033	1,363,000
2026	1,090,000	2034	1,407,000
2027	1,125,000	2035	1,453,000
2028	1,162,000	2036	1,500,000
2029	1,199,000	2037	1,548,000
		2038 (a)	1,599,000

(a) Maturity.

3. **Fees and Expenses:** Any fees and expenses that prospective proposers expect to charge, including fees and expenses of legal counsel and any other third party, must be outlined in detail. All costs of execution and delivery of the 2022 Obligations will be paid from the proceeds of the 2022 Obligations.
4. **Rating:** The Town does not intend to apply for a rating on the 2022 Obligations.
5. **Denominations:** The 2022 Obligations shall be in physically certificated, fully registered form without CUSIP® numbers and in denominations of \$1,000,000 of principal amount or any integral multiples of \$1,000 thereof.
6. **Transfers:** Transfers of the 2022 Obligations will be limited as set forth in the 2022 Indenture.
7. **Disclosure:** No offering document will be prepared.



UTILITY SYSTEM AND FINANCIAL INFORMATION

Utility System:

Information regarding the Town's Utility System can be found at:

<https://www.queencreek.org/departments/utilities/water/water-rates-and-fees>
<https://www.queencreek.org/departments/utilities/water/contractor-information/water-master-plan>
<https://www.queencreek.org/departments/utilities/water/water-quality>

Town Budget and Financial Statements:

The Town's budgets and audited financial statements can be found online at:

<https://www.queencreek.org/departments/finance/budget>
<https://www.queencreek.org/departments/finance/finance-reports-documents>.



**Town of Queen Creek, Arizona
Statement of Utility System Operations**

	Audited				
	2020/21	2019/20	2018/19	2017/18	2016/17
Water System:					
Revenues:					
Charges for Services	\$ 29,329,092	\$ 25,038,418	\$ 23,334,703	\$ 22,212,773	\$20,583,082
Capacity Fees	5,308,801	4,841,240	6,077,562	4,628,042	4,656,142
Investment Income (Loss)	19,230	321,351	705,762	354,493	97,342
Miscellaneous	19,890	53,311	23,977	211,014	109,674
Total Revenues	34,677,013	30,254,320	30,142,004	27,406,322	34,677,013
Operating Expenses:					
Cost of Sales and Services	17,429,513	23,406,834	14,743,884	11,053,173	9,175,383
Administration	762,929	756,493	708,307	571,245	1,033,240
Adjustment (a)	(626,350)	(6,539,878)	-	-	-
Total Operating Expenses	17,566,092	17,623,449	15,452,191	11,624,418	10,208,623
Net Revenues Available for Debt Service	\$ 17,110,921	\$ 12,630,871	\$ 14,689,813	\$15,781,904	\$15,191,917
Net Revenue Less					
Capacity Fees	\$ 11,802,120	\$ 7,789,631	\$8,612,251	\$11,153,862	\$10,535,775
Wastewater System:					
Revenues:					
Charges for Services	\$ 29,329,092	\$ 25,038,418	\$ 23,334,703	\$ 22,212,773	\$20,583,082
Capacity Fees	5,308,801	4,841,240	6,077,562	4,628,042	4,656,142
Investment Income (Loss)	19,230	321,351	705,762	354,493	97,342
Miscellaneous	19,890	53,311	23,977	211,014	109,674
Total Revenues	34,677,013	30,254,320	30,142,004	27,406,322	34,677,013
Operating Expenses:					
Cost of Sales and Services	17,429,513	23,406,834	14,743,884	11,053,173	9,175,383
Administration	762,929	756,493	708,307	571,245	1,033,240
Adjustment (a)	(626,350)	(6,539,878)	-	-	-
Total Operating Expenses	17,566,092	17,623,449	15,452,191	11,624,418	10,208,623
Net Revenues Available for Debt Service	\$ 17,110,921	\$ 12,630,871	\$ 14,689,813	\$15,781,904	\$15,191,917
Net Revenue Less					
Capacity Fees	\$ 11,802,120	\$ 7,789,631	\$8,612,251	\$11,153,862	\$10,535,775
Combined Utility System Revenues:					
Net Water System Revenue Available for Debt Service	\$17,110,921	\$12,630,871	\$14,689,813	\$15,781,904	\$15,191,917
Net Wastewater System Revenue Available for Debt Service	11,909,931	10,727,186	11,127,341	9,000,422	8,171,978
Combined Utility System Net Revenue Available for Debt Service	\$29,020,852	\$23,358,057	\$25,817,154	\$24,782,326	\$23,363,895
Net Water System Revenue Less					
Capacity Fees	11,802,120	7,789,631	8,612,251	11,153,862	10,535,775
Net Wastewater System Revenue Less					
Capacity Fees	5,757,987	6,120,725	5,091,205	4,137,508	3,046,008
Combined Utility System Net Revenue Less Capacity Fees	\$17,560,107	\$13,910,356	\$13,703,456	\$15,291,370	\$13,581,783

(a) Adjustments were made to account for one time capital costs and other accruals including GASB 68 Pension Expense, Payroll Accrual, Compensated Absences and Retaining Payable.



**Senior Lien Utility System
Estimated and Projected Annual Debt Service Requirements
and Estimated Debt Service Coverage***

Fiscal Year (July 1)	Net Revenues (b)	WIFA Loans Outstanding and Projected Debt Service (a)		Plus: The 2022 Obligations		Estimated Combined Debt Service Requirements	Estimated Debt Service Coverage Provided by Net Revenues (d)
		Principal	Interest	Principal	Interest (c)		
2021	\$29,020,852						
2022		\$2,053,858	\$2,158,803	\$1,187,000	\$89,492	\$5,489,153	
2023		2,451,046	3,576,877	1,091,000	608,730	7,727,653	
2024		4,141,515	3,337,433	1,124,000	576,000	9,178,949	
2025		4,234,515	3,244,433	1,157,000	542,280	9,178,229	
2026		4,329,670	3,149,278	1,192,000	507,570	9,178,519	
2027		4,427,032	3,051,917	1,228,000	471,810	9,178,759	
2028		4,526,652	2,952,297	1,265,000	434,970	9,178,919	
2029		4,628,586	2,850,363	1,303,000	397,020	9,178,969	
2030		4,732,889	2,746,060	1,342,000	357,930	9,178,879	
2031		4,839,617	2,639,331	1,382,000	317,670	9,178,619	
2032		4,948,830	2,530,119	1,423,000	276,210	9,178,159	
2033		5,060,584	2,418,362	1,466,000	233,520	9,178,466	
2034		5,174,949	2,304,000	1,510,000	189,540	9,178,489	
2035		5,291,979	2,186,970	1,555,000	144,240	9,178,189	
2036		5,411,741	2,067,208	1,602,000	97,590	9,178,539	
2037		5,534,302	1,944,647	1,651,000	49,530	9,179,479	3.16x
2038		5,659,728	1,819,220			7,478,949	
2039		5,788,090	1,690,859			7,478,949	
2040		5,919,458	1,559,491			7,478,949	
2041		6,053,905	1,425,044			7,478,949	
2042		6,191,506	1,287,443			7,478,949	
2043		6,332,337	1,146,612			7,478,949	
2044		5,732,183	1,002,473			6,734,656	
2045		5,856,236	878,419			6,734,656	
2046		5,983,021	751,635			6,734,656	
2047		6,112,597	622,058			6,734,656	
2048		6,245,028	489,627			6,734,656	
2049		6,380,378	354,278			6,734,656	
2050		6,518,712	215,944			6,734,656	
2051		3,101,775	74,559			3,176,335	
		<u>\$153,662,718</u>	<u>\$56,475,762</u>	<u>\$21,478,000</u>	<u>\$5,294,102</u>	<u>\$236,910,581</u>	

* Subject to change.

- (a) The existing debt service, comprised of current WIFA debt service net of the 2008 WIFA Loan to be Refunded debt service and Projections of the New Money WIFA Loans, are estimated at 2.5%.
- (b) Represents Net Revenues for Fiscal Year 2020/21.
- (c) Interest is estimated at 3.00%.
- (d) Estimated debt service coverage is computed using Net Revenues for Fiscal Year 2020/21 divided by the estimated maximum combined annual debt service requirements.



Utility System Indebtedness

Senior Lien Utility System Obligations

Issue Series	Purpose	Original Amount	Maturity Dates	Balance Outstanding
2008 (a)	WIFA - Water Company Acquisition	\$40,000,000	7/1/2009-38	\$20,971,559
2013 (a)	WIFA - Water Projects	16,000,000	11/2/2014-33	11,680,788
2020	WIFA - Acquisition of Water Assets	57,981,000	7/1/2021-50	56,548,188
2020	WIFA - Water Exchange Project	8,600,000	7/1/2021-50	8,387,479
2020	WIFA - Water Company Acquisition	12,807,500	7/1/2023-50	12,807,500
2021	WIFA - Water Asset Acquisition	8,238,763	7/1/2024-51	8,238,763
Subtotal				<u>\$118,634,277</u>
Less: The 2008 WIFA Loan Being Refunded				(20,971,559)
Plus: The 2022 Obligations				21,478,000 *
Plus: WIFA DW Loan 2022 (b)				46,000,000 *
Plus: WIFA CW Loan 2022 (b)				10,000,000 *
Total Senior Lien Utility System Revenue Obligations Debt to be Outstanding				<u><u>\$175,140,718</u></u> *

- (a) In February 2020, the WIFA Board approved certain amendments to the Town's WIFA Loans, including extending the final maturities by 10 years.
- (b) The Town is in the process of borrowing approximately \$56,000,000 from WIFA scheduled to close on May 13, 2022.

Subordinate Lien Water System Revenue Obligations

Issue Series	Purpose	Original Amount	Maturity Dates	Balance Outstanding
2013	Water Company Acquisition	\$19,425,093	7/1/2014-43	\$18,562,482
Total Subordinate Lien Water System Revenue Obligations Debt to be Outstanding				<u><u>\$18,562,482</u></u>



EXHIBIT A

BID FORM

**Town of Queen Creek, Arizona
Senior Lien Utility System Revenue Refunding Obligations, Series 2022**

Company Name: _____

The Town is expected to approve the Resolution for this transaction on April 20, 2022. Terms and conditions of the 2022 Obligations will be finalized by April 29, 2022. Closing is scheduled for May 11, 2022.

Alternative I: Interest Bid – Final Maturity July 1, 2037 ____%

Alternative II: Interest Bid – Final Maturity July 1, 2038 ____%

Total additional costs or fees of the Bidder to be paid from the proceeds of the 2022 Obligations:
\$ _____

Bidder acknowledges receipt and acceptance of the Legal Documents pertaining to the 2022 Obligations and that the Interest Rate Bid is valid through the date the 2022 Obligations are executed.

Authorized Signature

Date

Printed Name

Title