C2012-125

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
J2 ENGINEERING AND ENVIRONMENTAL DESIGN, L.L.C.

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of November 7, 2011, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and J2 Engineering and Environmental Design, L.L.C., an Arizona limited liability corporation (the "Consultant").

RECITALS

A. Pursuant to Section 3-3-10 of the Town Code, the Town may directly select consultants for professional and technical services.

B. The Consultant possesses the specific skill and experience required to provide professional conceptual design services for the Avenue Courtyard on the Avenue of the Fountains (the "Services").

C. The Town desires to enter into an Agreement with the Consultant for the Services.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until December 31, 2011, unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. This Agreement may be extended to provide additional time for the Consultant to complete the Services if (i) at least seven calendar days prior to the end of the term, the Consultant requests, in writing, to extend the Agreement and (ii) the Town approves the extension in writing as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason. Upon extension, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. The Town shall pay Consultant an amount not to exceed $4,997.76 for the Services at the rate as set forth in the Proposal, attached hereto as Exhibit B and incorporated herein by reference.

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

5. Documents. All documents prepared and submitted to the Town pursuant to this Agreement shall be the property of the Town.

6. Consultant Personnel. Consultant shall provide Aaron Allan as the Project Lead for the Services. In addition to the Project Lead, Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel of substantially equal ability and qualifications.

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

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

9. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

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

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

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

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

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

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

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

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

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

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

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

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

(2) Consultant's insurance shall be primary insurance as respects performance of the Agreement.

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

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

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

B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an

unimpaired liability insurance limit of $2,000,000 each claim and $2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Consultant shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

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

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

12. Termination; Cancellation.

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

12.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the Town to the Consultant for the undisputed portion of its fee due as of the termination date.

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

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

12.5 Gratuities. The Town may, by written notice to the Consultant, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the Town for the

purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

12.6 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the Town shall keep the Consultant fully informed as to the availability of funds for the Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Consultant shall be relieved of any subsequent obligation under this Agreement.

13. Miscellaneous.

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

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

13.3 Laws and Regulations. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

13.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Consultant.

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

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

13.7 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any Town payments issued hereunder and Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

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

13.9 Assignment. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Consultant shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

13.10 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used.

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

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

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

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

13.14 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Consultant any amounts Consultant owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Consultant any amounts Consultant owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

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

If to the Town: Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Facsimile: (480) 837-3145
Attn: Julie Ghetti, Interim Town Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Consultant: J2 Engineering and Environmental Design, L.L.C.
4649 E. Cotton Gin Loop, Suite B2
Phoenix, Arizona 85040
Facsimile: (602) 438-2225
Attn: Jeffrey M. Engelmann, Vice President

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

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

13.17 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.18 below, Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.18 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Consultant or its subcontractors

reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

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

13.19 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the Town determines that the Consultant submitted a false certification, the Town may impose remedies as provided by law including terminating this Agreement pursuant to subsection 12.2 above.

13.20 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement and the Scope of Work, the documents shall govern in the order listed herein.

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

[SIGNATURES ON THE FOLLOWING PAGES]

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

"Town"

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

Julie Ghetti, Interim Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on November 16, 2011, by Julie Ghetti, the Interim Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.

JANICE E. BAXTER
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Exp. December 8, 2012

(Affix notary seal here)

Notary Public in and for the State of Arizona

1622427.1

JANICE E. BAXTER
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Exp. [illegible]

"Consultant"

J2 ENGINEERING AND ENVIRONMENTAL DESIGN, L.L.C., an Arizona limited liability corporation

By: _____

Name: Jeff Engelmann

Title: Vice. President

(ACKNOWLEDGMENT)

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

This instrument was acknowledged before me on November 8, 2011, by Jeff Engelmann, as Vice President of J2 ENGINEERING AND ENVIRONMENTAL DESIGN, L.L.C., an Arizona limited liability corporation, on behalf of the corporation.

OFFICIAL SEAL
JEFFREY HOLZMEISTER
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 3, 2012

(affix notary seal here)

_____
Notary Public in and for the State of Arizona

1622427.1

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
J2 ENGINEERING AND ENVIRONMENTAL DESIGN, L.L.C.

[Scope of Work]

See following pages.

Scope of Services for Avenue Courtyard

Task 100 Site Inventory and Analysis
J2 will visit the site of the proposed Avenue Courtyard to inventory existing features that cannot be identified from recent aerials. This site visit documentation coupled with existing aerials will be used to create a base map of the project area. Town of Fountain Hills shall provide all as-built data in an electronic format that is available of the project area. As-built data shall include utility information and property information.

Task 100 Deliverables will include the following:

- Site base map developed from Town provided data, aerial imagery, and site visit (no actual topographic survey will be completed)

Task 100 Meetings will include the following:

- One (1) Site Visit with Town staff and Design Team

Task 200- Concept Plan Development
J2 will establish design and review schedule, goals and objectives with the Town. J2 will gather and utilize other existing pertinent information from the Town to ensure that the project site issues are clearly defined and understood. J2, in conjunction with the Town, will develop potential themes and verify design components. J2 will develop an initial plan concept(s), a maximum of two (2), of the Avenue Courtyard for review by the Town. Conceptual designs may include the following: massing of plant material, plant palette, color palette, hardscape elements, lighting concepts, landforms, etc. as necessary to convey the proposed intent of the conceptual designs. J2 will present the initial conceptual plan concept(s) to the TOFH and key stakeholders for review and comment.

Task 200 Deliverables will include the following:

- Two (2) initial concept plans (one of each initial concept) on sketch paper
- Support sketches, sections, elevations, perspectives as required to help portray the concept
- PDF file of all created imagery

Task 200 Meetings will include the following:

- One (1) Design Review Meeting to present/review the initial concept plans

Task 300- Final Concept Plan
Upon receiving input and comments on the initial plan concept(s) from the Town J2 will take all comments and provided information to produce two (2) final concept plans for the Avenue Courtyard. Refinement will include finalization of preferred materials, colors, plant palette, and overall aesthetic.

Task 300 Deliverables will include the following:

- Two (2) Color rendered final plan view concept board (one of each final concept)
- Two (2) Color rendered elevations, sections, perspectives board (one of each final concept)
- CD containing final concept plan boards in an electronic format (PDF)

Task 300 Meetings will include the following:

- One (1) Design Review Meeting to present final concept and preferred plan to Town staff

Task 400 Opinion of Probable Cost

J2 will provide an opinion of probable cost for each of the final concepts. The opinions of probable cost will include anticipated design fees and construction costs.

Task 400 Deliverables will include the following:

- Two (2) Opinions of Probable Cost (one for each final concept)

GENERAL UNDERSTANDING

TOFH shall designate a person for the project to act as the Client's representative with respect to the services to be performed or furnished by the Design Team under this agreement. Such person, department, or committee shall have complete authority to transmit instructions, receive information, interpret, and define the Client's policies and decisions with respect to the Design Team's services for the Project. The TOFH shall also provide key team personnel to be available in coordination meetings including operations and plan review representatives.

The TOFH shall make available to the Design Team all existing available data and records relevant to the site.

The TOFH shall approve in a timely manner all criteria and information as to Client's requirements for the Project including planning objectives and constraints, performance requirements, any budgetary limitations, and the submittal by the Design Team at the various phases of the projects.

The TOFH shall furnish to the Design Team, upon the request of Design Team for performing the services, any existing pertinent data prepared by or services of others, including electronic base maps, drawings of physical conditions in or relating to existing surface or subsurface utilities or structures within the planning area, hydrographic surveys, environmental or cultural assessments, impact statements, and other relevant environmental or cultural studies pertaining to the project.

The TOFH shall give prompt notice to Design Team whenever Client observes or otherwise becomes aware of any development that affects the scope of services or the time schedule of the Design Team in the performance or furnishing of the required services for the project, or any defect or non-conformance in the Design Team's services or in the work of any sub-contractor or sub-consultant.

The TOFH warrants and represents that members of the Design Team have the right to enter upon the real property involved herein, and extends this right to J2. The Design Team agrees to exercise due care in the performance of all services pursuant hereto.

The Design Team has provided no environmental or cultural investigations on this site/project, has no knowledge of any adverse environmental or cultural conditions on the site/project, and is not responsible for and has no liability for any such environmental or cultural condition should one be found. It is the responsibility of the TOFH to investigate and make these environmental or cultural determinations based on the best knowledge and information available at the time of this project. Clearance to begin work shall be given prior to directing or ordering the preparation of any engineering documents.

The Design Team provides construction documents in full or in part freehand drafting and electronic CAD format. Any electronic files provided are for information and convenience purposes only and the final approved/sealed hard copy plans shall prevail. All construction documents will be developed to the TOFH and MAG design and construction standards and specifications.

DESIGN ASSUMPTIONS:

The following services are understood as **NOT** a part of J2's scope of services for this project:

1. Reproduction of any submittals – J2 will supply one set of conceptual plans and/or color prints as indentified in the scope to TOFH. Any reproduction of additional sets of documents will be the responsibility of the Town.
2. Attendance at any Public Meetings or preparation of any public meeting advertisements or mailings
3. Cultural and or Environmental Clearances
4. Survey work
5. Legal descriptions and effort to establish any easements
6. Utility extensions
7. Attendance at pre-bid or pre-construction conferences
8. Construction Administration and/or Post Design Services
9. Structural Engineering
10. Preparation of documents or submittal to any Design Review Board (DRB) type agency or attendance at any DRB meetings is not included in this scope of services.
11. Construction Documents
12. Gathering of As-built data

We would expect to start our services promptly after receipt of your acceptance and complete our services in a timely manner. This exhibit represents the entire understanding of the Scope of Services as set out herein and may only be modified in writing signed by both parties.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
J2 ENGINEERING AND ENVIRONMENTAL DESIGN, L.L.C.

[Proposal]

See following pages.

DERIVATION OF COST PROPOSAL: DESIGN SERVICES

AVENUE COURTYARD
TOWN OF FOUNTAIN HILLS

J2 Engineering and Environmental Design, LLC

Estimated direct labor and rates

Classification	Estimated Man Hours	Current Rates		Total
Design Manager	0	$70.00		$0.00
Project Engineer	0	$47.50		$0.00
Engineer/Designer	0	$36.31		$0.00
Senior Project Landscape Architect	0	$51.83		$0.00
Project Landscape Architect	9	$41.38		$372.42
Landscape Designer	55	$27.65		$1,520.75
CADD/Designer	0	$32.10		$0.00
Clerical	0	$21.58		$0.00

Total Hours 64 **Total Direct Labor** $1,893.17

Total Estimated Labor:	$1,893.17
Overhead @ 139.99% of Direct Labor	$2,650.25
Total Estimated Labor and Overhead:	**$4,543.42**

Estimated Direct Expenses	Estimated Expenses			Total
Printing, Reproduction, Reprographics, Supplies Etc.				$0.00

Total Direct Expenses **$0.00**

Subconsultants: Design

No Subconsultants are anticipated **$0.00**

Total Estimated Outside Services:	$0.00
Total Estimated Cost J2 and Subconsultant	$4,543.42
Fixed Fee at 10%	$454.34
Total Estimated Cost:	**$4,997.76**

J2 Engineering and Environmental Design LLC

Jeffrey Engelmann, RLA
Principal

10·13·11
Date

Avenue Courtyard Fee Schedule
10/13/2011
J2 Engineering and Environmental Design, LLC

Task Number	Task:	Design Manager	Project Engineer	Engineer/ Designer	Sr. Project Landscape Architect	Project Landscape Architect	Landscape Designer	CADD/ Designer	Clerical Support	Total
100.0	**Site Inventory and Analysis**									12
100.1	Site Visit and Inventory (1 meeting)					3	3			6
100.2	Develop base map						6			6
200.0	**Concept Plan Development**									25
200.1	Concept A plan view development					1	8			9
200.2	Concept A support sketches development						3			3
200.3	Concept B plan view development					1	8			9
200.4	Concept B support sketches development						3			3
200.5	Design Review Meeting (1 meeting)					1				1
300.0	**Final Concept Development**									25
300.1	Concept A plan refinement and rendering					1	3			4
300.2	Concept A support sketches refinement and rendering						8			8
300.3	Concept B plan view refinement and rendering					1	3			4
300.4	Concept B support sketches refinement and rendering						8			8
300.5	Design Review Meeting (1 meeting)					1				1
400.0	**Final Concept Development**									2
400.1	Concept A opinion of probable cost						1			1
400.2	Concept B opinion of probable cost						1			1
	Grand Total Design:	0	0	0	0	9	55	0	0	64

J2 Engineering and Environmental Design, LLC
4649 East Cotton Gin Loop
Suite B2
Phoenix, Arizona 85040
Phone: 602.438.2221
Fax: 602.438.2225

transmittal

To:	Lori Gary	Date:	11/8/2011
Company:	Town of Fountain Hills		
From:	Karla Hunt	Project Number:	11.0518
Re:	Subconsultant Agreement	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes:

Enclosed are two signed copies of the Subconsultant Agreement for the upcoming **Avenue Courtyard on the Avenue of the Fountain**'s project. Please return one signed copy for our files. We appreciate the opportunity to work with the Town again. Please contact me if you need anything additional from J2.

Thank you.

Karla Hunt