

## **REQUEST FOR PROPOSALS**

**(As Amended by Amendment #1 – August 4, 2005)**

The Town of Fountain Hills, Arizona, is soliciting proposals from qualified marketing research firms for scientifically and statistically valid representative sample survey of Fountain Hills adult residents.

### ***Purpose and Scope of Work***

The overall purpose of this survey is to augment the attitudinal input received throughout the public strategic planning process, including attitudes toward strategic initiatives, and willingness to pay for them, that will be gathered in a Town Hall meeting to be held August 13, 2005. More specific objectives for questionnaire development will be available after this Town Hall meeting. The project will include survey design, sample selection, development and testing of survey instrument, administration of survey instrument, data processing, analysis and reporting.

The base population to be studied is the adult (18 years old and older) citizens residing within the boundaries of the Town of Fountain Hills. The Town's estimated 2004 adult population is approximately 18,605, of approximately 22,863 total. In addition to this base population, but as secondary priorities, the Town of Fountain Hills is interested in being able to cross-tabulate questionnaire data for subpopulations in the following order of descending priority: four age groups (18-34, 35-44, 45-64, or 65+); four employment status groups (student, employed, non-working, or retired); two family structures (children under 18 living at home, or no children under 18 living at home); and four annual household income groups (less than \$35,000, \$35,000 to less than \$75,000, \$75,000 to less than \$150,000, or \$150,000 or more). Summaries of the estimated population by age group and estimated households by income are in Appendix B.

### ***Background***

The Town of Fountain Hills is undergoing a citizen-driven strategic planning process. The year-long process has included community leader interviews, a youth visioning institute, a compilation of SWOT information, town hall public meetings, and workshops to educate the public about key issues (additional information about the Town's citizen-driven strategic planning process is available at <http://www.fh.az.gov/ourtownourchoices/>). Appendix C contains a chart describing the overall process.

At the Town's second Town Hall meeting on August 13, volunteer participants will provide input on a number of scenarios (goal-based strategic-level decision packages) made up of policies, programs and projects, with associated per-household cost (tax) impact information. The scenarios are grouped into focus areas. A preliminary draft—subject to change—of the ten focus areas and associated scenarios, in no particular order, is attached to this RFP as Appendix A. At the Town Hall meeting, participants working in small groups will be asked to identify selected scenarios they believe should be implemented, based on both benefits and cost impacts, and then assign to the selected scenarios a high, medium or low priority rating. Because of the Town Hall process, the number of strategic choices is expected to be narrowed significantly from the list in Appendix A, to include perhaps 10 to 20 decision items.

Participants in the Town Hall are self-selected, so the consensus decisions reached at the Town Hall may not reflect the attitudes of the Town's citizenry as a whole. The purpose of the survey is to augment the information obtained throughout the entire process with opinions from a representative sample of the adult population. The results of the August 13 Town Hall meeting will impact the specific objectives of the survey. The survey, together with the other sources of information, are intended to provide the Town Council and administration with the confidence to move in certain strategic directions supported by the community.

### ***Required Components of Proposal***

Proposals must include all of the following:

- 1) **Qualifications of the firm:** Describe the background and experience of the proposing firm in conducting opinion research, and how long the firm has been in the opinion research business.
- 2) **Specific Firm Experience:** Provide information on the specific experience of the firm in conducting studies dealing with measuring public attitudes about local government issues, such as: strategic plans, economic development, increasing revenue, fiscal policy, municipal services, or public policies. Provide names and telephone numbers for at least three references who are directly knowledgeable about the firm's previous work in any of these relevant subject areas.
- 3) **Principal Investigator's Experience and Education:** Provide detailed information on the qualifications of the principal investigator, the individual ultimately responsible for the quality of the research product. This information should include a résumé detailing the principal investigator's:
  - a) Specific academic background and educational experience in survey research, and
  - b) Experience in conducting and overseeing similar survey research studies.
- 4) **Project Manager's Experience and Education:** If the proposed principal investigator is not also the project manager, provide detailed information on the qualifications of the project manager, the individual who will directly manage the personnel and the timetable of the research project. This information should include a résumé detailing the project manager's:
  - a) Specific academic background and educational experience in survey research, and
  - b) Experience in conducting and managing similar survey research studies.
- 5) **A description of the research approach proposed:** In seven or fewer pages for this section, please specify what you propose to do in each of the following areas:
  - a) *Research design:* Describe your process and procedures for designing survey research projects. Describe in general terms the structure of the questionnaire you propose to design for this project (for example: optimum survey length; types of answers envisioned, such as open- or closed-ended, multiple choice, agree/disagree, etc.). Describe how you expect to measure both the respondents' affinity for various strategic choices and their willingness to pay for the strategic choices that may be subjects of the questionnaire. Describe how you propose to test the questionnaire.

- b) *Sample selection*: Describe how you will balance the goals of efficiency and comprehensiveness so that the sample selected is both economic and statistically defensible. Describe your proposed sample size for the base population study, and discuss why that sample size is appropriate. Describe your sample selection methodology. Describe how you will ensure that the sample is representative of the subject population. Separately, describe which subpopulations (see Purpose and Scope of Work, above) will also be measured within the available budget, to cross-tabulate the data by subpopulations.
  - c) *Field work*: Describe your proposed questionnaire administration methodology and your quality-control procedures.
  - d) *Data processing*: Describe how data is processed, cleaned and presented. Describe your privacy control and security procedures in general terms, without disclosing information that might compromise your security procedures (note that proposals may become public information).
  - e) *Analysis and reporting*: Describe the nature of the work products you envision.
- 6) **Project Plan**: Describe the major steps in your proposed process, including a timetable. The Town of Fountain Hills anticipates awarding the contract no later than September 2, 2005, and that the actual field work will be conducted sometime between September 7, 2005 and October 7, 2005, with final report documents submitted no later than October 21, 2005.
- 7) **Pricing**: Quote a firm, fixed price for this research. If there are any variable or additional costs, describe exactly what these are and how they are calculated. Quote a price for surveying the base population, and any additional price to survey additional subjects in order to be able to perform cross-tabulations of subpopulations (described under Purpose and Scope of Work, above). Total price, including both base population survey and additional price to perform cross-tabulations of subpopulations, should not exceed the Town's available budget.

### ***Deliverables***

Contractor will deliver each of the following products or services:

- 1) **Action plan**: Within one week after the contract is awarded, Contractor will submit to the Strategic Plan Project Manager a detailed project plan, showing each activity or milestone, the responsible individual, and start- and end-dates. The action plan will also show tasks assigned to the Strategic Plan Project Manager and any other Town representatives or employees.

- 2) **Survey questionnaire:** In late August, Contractor will draft a proposed survey questionnaire based on information provided by the Strategic Plan Project Manager. Contractor will work with a Subcommittee of the Technical Advisory Committee<sup>1</sup>—and participate in a meeting with the entire Technical Advisory Committee—to review and discuss the proposed questionnaire. Contractor will prepare a final questionnaire based on feedback from these meetings.
- 3) **Report on results of questionnaire test:** Contractor’s brief report will describe testing procedures, test results, and changes to the questionnaire based on the results.
- 4) **Final report documents:** All final report documents should be submitted both in one hard copy and in electronic form to facilitate reproduction.
  - a) Contractor will prepare and submit a brief final report that summarizes the survey procedures and results in an easy-to-read format that the public may readily comprehend. Use of color and graphics is encouraged.
  - b) Contractor will prepare and submit a PowerPoint presentation that summarizes the survey procedures and results, using easily-understood terms and graphics. Contractor should be prepared to use this presentation in presenting the draft report to the Technical Advisory Committee or its subcommittee. The final report to the Town Council may either be a separate report to the Town Council, or it may be incorporated into the overall draft strategic plan.
  - c) Contractor will prepare and submit a technical report that documents the survey procedures and results in more rigorous and technical detail.

### ***Selection Criteria***

The Town of Fountain Hills has budgeted up to \$28,000 (Twenty-Eight Thousand Dollars) for this research. Proposals with a total price greater than this amount—including additional amounts to accommodate cross-tabulations of subpopulations—will be disqualified. A Technical Advisory Committee subcommittee may interview selected bidders before recommending a contract award. Selection for the award of the contract will be based on the maximum benefit to the Town of Fountain Hills rather than only on price or any other single criterion. Selection will be made on the basis of firm qualifications, principal investigator qualifications, project manager qualifications (if different from principal investigator), description of the research approach proposed, amount of cross-tabulation information to be provided, and consistency of the project plan with the schedule dates noted, interview (if any), as well as price.

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<sup>1</sup> The Technical Advisory Committee is a group of Fountain Hills citizens, Town employees and contractors who are responsible for overseeing the strategic planning process. Members include: a Town Councilmember; a community activist; semi-retired or retired corporate executives; consultants in strategic planning, human resources or business practices; Town Manager; Executive Assistant to the Town Manager; contracted Strategic Plan Project Manager; contracted Facilitator; and contracted communications specialists.

## ***Instructions for Submission of Proposals***

The deadline for Town of Fountain Hills receipt of proposals is 4:00 p.m. Mountain Standard Time, Thursday, August 11, 2005. Note that Arizona does not participate in daylight savings time. Proposals received after the due date and time will not be considered. Please submit one signed original and two copies in hard copy form. Submission via fax or email will NOT be accepted. Submission must be made to:

Ms. Shaunna Williams  
Executive Assistant to the Town Manager  
Tel. (480) 816-5107

Physical location for personal delivery or overnight delivery services:  
16705 E. Avenue of the Fountains  
Fountain Hills, AZ 85268

Mailing address for U.S. Postal Service delivery:  
P.O. Box 17958  
Fountain Hills, AZ 85269

If you have any questions regarding this RFP, please send email to:

Mr. Phillip Blackerby  
Strategic Plan Project Manager  
[strategicplan@fh.az.gov](mailto:strategicplan@fh.az.gov)

Telephone questions will not be accepted. All questions and answers will be released to all parties who register a request for a copy of this RFP. To register a request, please call Ms. Williams at 480-816-5107, or email to [strategicplan@fh.az.gov](mailto:strategicplan@fh.az.gov). In either case, leave complete contact information, including name, firm name, mailing address, telephone number and email address.

## ***Other Terms and Conditions***

Information regarding this survey project, including the final report will become the property of the Town of Fountain Hills. This project is “work for hire,” and the Town of Fountain Hills will retain the copyrights for all reports, including the final report documents.

Contractor will not release any information regarding this project to the public or press without the prior written consent of the Town Manager.

The selected contractor will be required to execute the Town’s standard professional services agreement, in the form prepared by the Town Attorney. A standard form of this agreement is attached as Appendix D.

## Appendix A. Focus Areas and Scenarios

(Preliminary Draft; Subject to Revision)

### Small-Town Atmosphere and Town Identity

- Scenario A: Implement the Town of Fountain Hills *Strategic Plan*
- Scenario B: Extend the community's strong volunteer focus
- Scenario C: Strengthen the community's small-town identity
- Scenario D: Develop an inclusive neighborhood and community focus

### Commercial Vitality and Business Development

- Scenario A: Maintain current policies
- Scenario B: Attract more businesses to meet local residents' needs
- Scenario C: Establish a vacation and downtown shopping destination center

### Housing and Affordability

- Scenario A: Continue to support development of quality housing
- Scenario B: Support affordable housing alternatives
- Scenario C: Take an active role in ensuring affordable housing

### Preservation of the Environment

- Scenario A: Continue to protect the environment and maintain open spaces
- Scenario B: Enhance dedication to stewardship of the natural environment
- Scenario C: Implement new environmental quality initiatives

### Parks and Recreation

- Scenario A: Provide recreational facilities for multi-generational activities
- Scenario B: Upgrade parks to meet national standards
- Scenario C: Expand current parks and recreation programs and amenities

### Governmental Financial Stability

- Scenario A: Increase taxes and fees to offset loss of revenues at build-out
- Scenario B: Reduce sales tax dependence with a property tax and higher fees
- Scenario C: Increase grant funding to develop and support Town services
- Scenario D: Institutionalize long-term financial and strategic planning

### Municipal Government Services

- Scenario A: Provide new household services: Garbage, recycling, water and wastewater
- Scenario B: Change how vital services are currently provided
- Scenario C: Establish public transportation systems
- Scenario D: Increase pedestrian safety
- Scenario E: Improve communications services and amenities
- Scenario F: Increase access to quality health care

Arts and Culture

Scenario A: Make Fountain Hills a cultural center for the arts

Scenario B: Make Fountain Hills a destination center for arts and cultural activities

Education: Higher and Continuing Education and Support of Educational Excellence

Scenario A: Create lifelong learning opportunities for residents of all ages

Scenario B: Integrate the Town and the schools more closely

Physical Planning: Zoning and Architecture

Scenario A: Enforce the current General Plan and zoning ordinance

Scenario B: Halt creation of new gated communities

Scenario C: Establish controls over commercial architectural compatibility

Scenario D: Require use of natural landscaping

Scenario E: Limit population to 30,700

Scenario F: Annex the State Trust Lands

## Appendix B. Population and Income Summaries

(Source: Claritas, Inc.)

### *Population by Age Group*

*2004 est.*

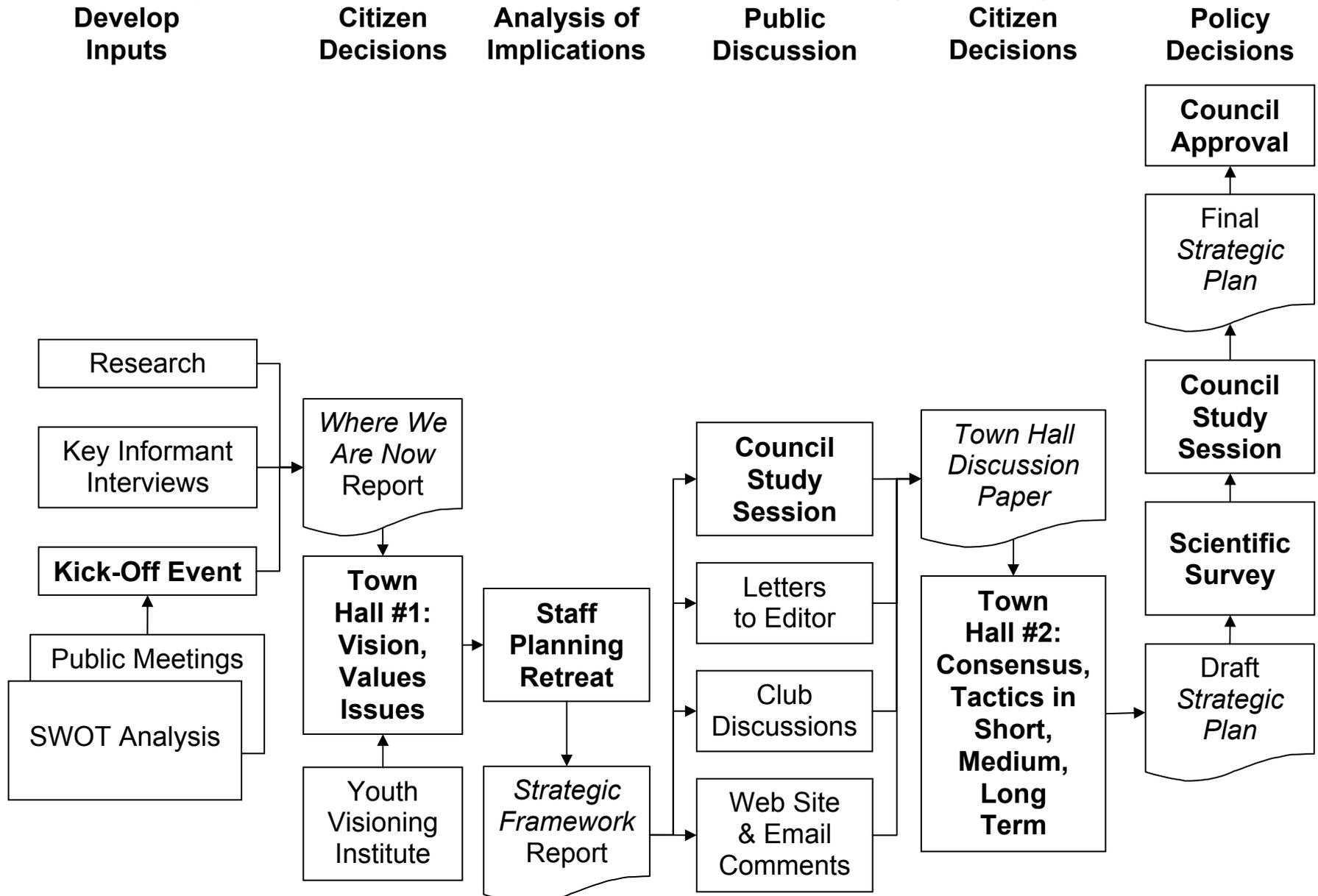
<i>Age Group</i>	<i>Population</i>	<i>Percent</i>
0-17	4,258	19%
18-44	6,449	28%
45-64	7,882	34%
65+	4,274	19%
Adults	18,605	81%
Total	22,863	100%

### *Households by Income Group*

*2004 est.*

<i>Income Group</i>	<i>Households</i>	<i>Percent</i>
<\$35,000	2,124	21%
\$35,000-<\$75,000	3,603	36%
\$75,000-<\$150,000	3,044	31%
\$150,000+	1,190	12%
Total	9,961	100%

## Appendix C. Town of Fountain Hills Citizen-Driven Strategic Planning Process



**Appendix D.**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN**  
**THE TOWN OF FOUNTAIN HILLS**  
**AND**

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THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of August \_\_\_\_\_, 2005, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and \_\_\_\_\_, an Arizona \_\_\_\_\_ (the "Consultant").

RECITALS

A. The Consultant possesses the skill and experience required to complete scientifically and statistically valid representative sample survey research regarding public attitudes toward the strategic choices, and willingness to pay for, strategic choices to be made by participants at a strategic planning meeting on August 13, 2005. The project will include survey design, sample selection, development and testing of survey instrument, administration of survey instrument, data processing, analysis and reporting (the "Services").

B. 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, and the following mutual covenants and conditions, 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 \_\_\_\_\_.
2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference.
3. Compensation. The Town shall pay Consultant a price not to exceed \$ \_\_\_\_\_ for the Services, at the rates set forth in the Rate Schedule, 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 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 prior without 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. 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.

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 defend, indemnify and hold harmless the Town, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or caused by the negligent, willful, wrongful or intentional acts of the Consultant, its employees, agents or any tier subcontractors, or the negligent acts, errors, mistakes, omissions, work or services of the Consultant, its employees, agents, or any tier of subcontractors in the performance of this Agreement. Consultant's duty to defend, hold harmless and indemnify the Town, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Consultant or any tier of subcontractor or any other person for whose negligent acts, errors, mistakes, omissions, work or services the Consultant may be legally liable. 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 duly licensed by the

State of Arizona 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. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

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

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be

applicable with respect to the policy limits provided to the Town. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreement with Subcontractor 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 the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant shall furnish the Town with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Consultant's 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. If a certificate of insurance is submitted as verification of coverage, the Town shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally certificates of insurance submitted without referencing a contract number will be subject to rejection and returned or discarded. Certificates of insurance 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, 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, \$1,000,000 Products and Completed Operations Annual Aggregate and a \$1,000,000 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. Workers’ Compensation Insurance. Consultant shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of 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 \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 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. Applicable Law; Venue. In the performance of this Agreement, Consultant shall abide by and conform to any and all laws of the United States, State of Arizona and Town of Fountain Hills, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. 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 State of Arizona.

13. Termination; Cancellation.

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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 entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is cancelled 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.

14. Miscellaneous.

14.1 Independent Contractor. The Consultant acknowledges that the Services provided under this Agreement are being provided as an independent contractor, not as an

employee or agent of the Town. Both parties agree that this Agreement is nonexclusive and that Consultant is not prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere.

14.2 Laws and Regulations. The 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 remains in compliance with of all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (i) existing and future Town and County ordinances and regulations, (ii) state and federal laws and (iii) Occupational Safety and Health Administration (“OSHA”) standards.

14.3 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.

14.4 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.

14.5 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.

14.6 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 that the Consultant should make arrangements to directly pay such expenses, if any.

14.7 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.

14.8 Assignment. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the Town and no delegation of any duty of Consultant shall be made without prior, written permission of the Town.

14.9 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.

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

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

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

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

If to Town:                      Town of Fountain Hills  
    16836 E. Palisades Boulevard  
    Fountain Hills, Arizona 85268  
    Facsimile: 480-837-3145  
    Attn: Timothy G. Pickering, Town Manager

If to Consultant:                \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_  
    Facsimile: \_\_\_\_\_  
    Attn: \_\_\_\_\_

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 Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) 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.

14.14 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 the 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.

14.15 Conflicting Terms. In the event of a conflict between the Scope of Services and this Agreement, the terms of this Agreement shall govern.

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

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

**“Town”**

TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation

\_\_\_\_\_  
Timothy G. Pickering, Town Manager

ATTEST:

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**“Consultant”**

\_\_\_\_\_,  
an Arizona \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2005,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, an  
Arizona \_\_\_\_\_, on behalf of such \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2005,  
by Timothy G. Pickering, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation, on behalf of the Town of Fountain Hills.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

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

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[Scope of Work]

See following pages.

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

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[Rate Schedule]

See following page.