

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
HUNDEN STRATEGIC PARTNERS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of June 26, 2017, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Hunden Strategic Partners, Inc., an Indiana corporation (the "Consultant").

RECITALS

A. Pursuant to Section 7.1 of the Town Procurement Policy and 3-3-26 of the Town Code, the Town may directly select certain consultants for professional and technical services.

B. The Consultant possesses the specific skill and experience required to perform a project feasibility study and preliminary financial projection analysis for the development of a man-made beach and mixed-use district for the Town (the "Services").

C. The Town desires to enter into an Agreement with the Consultant to perform the Services, as more particularly set forth in Section 2 below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the 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 June 20, 2018, unless terminated as otherwise provided in this Agreement.

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 \$18,800.00 for Phase I of the Services at the rates set forth in the Fee Proposal, attached hereto as part of Exhibit A.

4. Payments. The Town shall pay the Consultant as follows, upon receipt and approval of the following invoices:

\$9,400.00	Kickoff invoice to initiate work
\$9,400.00	Invoice for final draft of presentation style report

The contract number must be referenced on all invoices.

5. Documents. All documents, including any intellectual property rights thereto, 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 performance of the Services 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 possessing 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 with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify 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") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor in connection with Consultant's work or services 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, 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 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.

J. 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. 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 a 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 with respect to performance of this 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) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) 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 in any way related 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.

D. Workers' Compensation Insurance. If Consultant employs anyone who is required by law to be covered by 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 be 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. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. 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 this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this 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 and withhold from the Consultant an amount equal to 150% of the gratuity.

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

### 13. Miscellaneous.

13.1 Independent Contractor. 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 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 this 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, this 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 this Agreement which may remain in effect without the invalid provision or application.

13.7 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 this 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.

13.8 Assignment: Delegation. No right or interest in this Agreement shall be assigned or delegated 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.

13.9 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. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

13.10 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.

13.11 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.

13.12 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.

13.13 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.

13.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (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 or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Grady E. Miller, Town Manager

With copy to: GUST ROSENFELD P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire

If to Consultant: Hunden Strategic Partners, Inc.  
688 North Milwaukee Avenue, Suite 202  
Chicago, Illinois 60642  
Attn: Robin Scott Hunden, 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 or (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. 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.

13.15 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.

13.16 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.17 below, Consultant's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any 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 13.17 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.

13.17 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.

13.18 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

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

13.20 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 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

Grady E. Miller  
Grady E. Miller, Town Manager

ATTEST:

Beverly J. Bender  
Beverly J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On June 26<sup>th</sup>, 2017, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



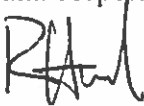
Heather Ware  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**"Consultant"**

HUNDEN STRATEGIC PARTNERS, INC.,  
an Indiana corporation

By: 

Name: Robin Hunden

Title: President

(ACKNOWLEDGMENT)

STATE OF Illinois )  
COUNTY OF Cook ) ss.

On June 23<sup>rd</sup>, 2017, before me personally appeared Robin Hunden, the President of HUNDEN STRATEGIC PARTNERS, INC., an Indiana corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

  
Notary Public

(Affix notary seal here) \_\_\_\_\_



EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
HUNDEN STRATEGIC PARTNERS, INC.

[Scope of Work and Fee Proposal]

See following pages.

## UNDERSTANDING OF THE ASSIGNMENT

The Town of Fountain Hills, Arizona (Client or Town) is interested in retaining the Hunden Partners Team, including Applied Economics, LLC, to perform a project feasibility study and preliminary financial projection analysis for the development of a man-made beach and mixed-use district (Project) in Fountain Hills. This would set the stage for a deeper analysis of the viability of the project, including a more in-depth market and financial analysis, as well as a future economic and fiscal impact analysis. The Project is part of an overall vision to create a destination district centered around the impressive fountain located in Fountain Hills. The Project is proposed to have the following elements:

- Crystal Lagoon man-made swimmable beach area,
- Concessions,
- Boat rentals,
- Clubhouse, and
- Other amenities.

The centerpiece of the Fountain Hills community is a large natural pond with the fourth-largest fountain in the world at its center. This already sets a theme for a water-focused strategy. The proposed Project expands greatly on the water theme and would be located within the Town-owned park. The Town plans to create possible admission fee and membership options for the new beach attraction. The Project has many parts and variables, and HSP understands that the first step in the study process is to examine the feasibility of the Project, including capacity, cost to build, operating costs, and staffing and revenue projections. HSP proposes a two-phased approach to the Project analysis. The first phase, detailed in this scope of work, includes an initial high-level analysis to initiate the preliminary examination of the Project details. Then, once Phase I is complete, HSP will work with the Client to determine next steps.

Located in Maricopa County, Arizona, Fountain Hills is aptly named for its iconic fountain, which sends water almost 600 feet in the air every hour. The population of the town is 22,489 and growing. To capitalize on this growth, increase quality of life, and attract businesses and tourism, the Town wants to understand the market demand and feasibility of introducing the Crystal Lagoon man-made body of water in and around the fountain.

With over 600 projects world-wide, Crystal Lagoons uses water innovation technology (cooling applications generate the water in a sustainable manner) to build and sustain bodies of water at low costs for recreational purposes. With both public and industrial applications, the real estate project enables the creation of destination assets by developers in areas that lack large bodies of water, within cities and deserts for example, with the added benefit of increasing commercial value, as well as quality of life. Recreational uses are myriad and can include swimming and kayaking, depending on the project. The water needs of the lagoon are low, which keeps costs low.

Through interviews with key stakeholders, project sponsors, city officials, as well as site tours and project development reviews, Hunden Strategic Partners (HSP) proposes to perform a high-level analysis of the Project, the local market situation, comparable development concepts, and the preliminary financial structure and cost assumptions to provide the Town with a strong and supported plan for future steps.

## SCOPE OF SERVICES

Hunden Strategic Partners (HSP) proposes a scope of work that meets or exceeds all the elements necessary for a high-level project study in Fountain Hills, Arizona. HSP is happy to discuss any changes to this scope and to modify the report's organization and methodology. Certain aspects can be reduced or expanded (in more or less detail) in order to get better data or manage costs. HSP's work is proposed as follows:

- Task 1 – Kickoff, Project Orientation & Interviews
- Task 2 – Profile of Proposed Project
- Task 3 – Economic, Demographic & Tourism Analysis
- Task 4 – Comparable Development Profiles
- Task 5 – Preliminary Demand & Financial Projections
- Task 6 – Implications & Recommendations

The deliverable will include a draft presentation-style report of preliminary findings and recommendations for review and comment. Once next steps are agreed-upon, HSP will work with the Client to craft a scope of work for a deeper dive analysis in Phase II.

### Task 1: Project Kick-off, Project Orientation and Interviews

**Pre-kickoff Phone Call.** Once awarded a contract, HSP will initiate a pre-kickoff phone call with the Client to confirm goals of the study, finalize the scope of work and other contextual issues related to the project, and begin preparations for the kickoff.

**Project Kickoff.** Following the initial pre-kickoff phone call, HSP will present the Client with a Kickoff Memo identifying those contacts and resources necessary to ensure complete review and assessment of critical issues. This piece will be critical, as HSP will require all available data on the Project, including numbers, cost estimates, etc. from Crystal Lagoon. HSP will also establish a timeline for holding meeting and presentations with the Client, as well as key administrators and community representatives as identified by the Client.

HSP will work with Client representatives to prepare a robust, efficient and intense kickoff trip that typically runs one to three days and includes meetings with the Client, the key stakeholders, and others associated with the Project, as well as in-depth tours. HSP will also review available data related to the project.

As part of the Kickoff, HSP will:

- Obtain information and data from the Fountain Hills, Crystal Lagoons, economic and development authorities, and any other appropriate agencies.
- Tour the area and meet with the local officials, community leaders and others identified in consultation with the Client.
- Interview stakeholders from a variety of local private and public organizations and perform fieldwork as appropriate.
- Review the various projects on which HSP professionals have worked, discuss their attributes, implementation and approach as part of the interview with the Client and others as previously described.



- Gather and analyze background information related to the Project, including all previous studies.
- Gather and review available economic, demographic and financial data.
- Inventory Fountain Hills retail, restaurant and hotel facilities.

## **Task 2: Profile of Proposed Project**

During the kick-off, HSP will tour the existing developments at the proposed site to understand what the Town has been able to offer in the past and what it believes it could induce in the future with greater facility options with the construction of a Crystal Lagoon and support amenities. HSP will:

- Profile the proposed project:
  - size,
  - location,
  - costs, including proposed sources and uses of funds,
  - admission fees, rental rates,
  - expected visitation, including any projected demand for any relevant item (and if not known, HSP will make projections later in the study),
  - number of employees,
  - general expectations on expenses,
  - management,
  - marketing and
  - other key elements of the proposed business plan.
- Determine any prior comparable deals that Crystal Lagoons has completed, to be profiled in a separate task, and
- Profile site, access, visibility, and adjacent developments for the Project and how these compliment the Project.

HSP will also complete a historical profile of the development area.

## **Task 3: Economic, Demographic and Tourism Analysis**

HSP will evaluate Fountain Hills and the surrounding area's position as a center of economic activity, including related to resident population and growth, business location and growth, accessibility, and as destination for visitors. HSP will provide a detailed focus on downtown and the submarket surrounding the proposed Crystal Lagoon Project.

HSP will summarize key demand generator trends and comment on the overall growth prospects for the market. This analysis will provide a realistic assessment of the strengths, weaknesses, opportunities and threats (SWOT). Among the data gathered and analyzed will be:

- Geographic attributes, accessibility, and transportation links,
- Trends in population growth and income,

- Demographics,
- Corporate presence, major employers, and any significant future changes,
- Analysis of business and commercial development,
- Higher education activity and implications for the hotel market,
- Cores of economic activity,
- Major retail destinations,
- Profile of public assembly and other meeting facilities,
- Arts, culture, and entertainment assets and activity,
- History and expected future trends for business, resident and tourism growth, and
- General real estate trends, including downtown and major arterial nodes of activity.

**ESRI Neighborhood Analysis.** One of the key differentiating factors between the market analysis for one area versus another in Fountain Hills is the neighborhood. HSP will profile the neighborhood demographics (using ESRI Tapestry analyses), nearby developments, major roadways, development trends and other factors at play that will materially impact future development opportunity in the development area.

The analysis will provide implications for the future development.

#### **Task 4: Comparable Development Profiles**

HSP will profile comparable developments for the proposed Project to understand if/how these have been developed in other places. Did the public sector provide funding or incentives? If so, how much? Did this pan out ultimately? How much risk did the stakeholder take? What do the answers to these questions imply for next steps for the Town of Fountain Hills?

Profiles will include:

- Name/Area/Location,
- Market characteristics (similarities and differences from Fountain Hills and greater Phoenix metro),
- Cost and funding; Sources and Uses,
- Management,
- Marketing,
- Ownership,
- Sizing, parking,
- Price points for admission, concessions,
- Demographics of patrons, as available ,
- Performance data, as available,
- Competitive situation, and
- Implications.

These will set the stage for an understanding of how any recommended Project will be able to penetrate the current and future local market for new real estate development.

### **Task 5: Preliminary Demand and Financial Projections**

In this task HSP will create a preliminary demand and financial projection for the recommended Project, or range of results, based on preliminary assumptions.

Based on the projection of demand and a number of assumptions regarding rental rates, fees, food and beverage per-capita revenues and others, HSP will prepare a financial projection for each facility. This financial analysis will include the following:

- Estimated line-item revenues for ten years of operations.
- Expenses directly related to the facilities will also be projected for the period.
- The demand profile, experience with similar facilities and data from existing similar projects will be used to model the operating revenues and costs of the new facilities and will be incorporated into the business plan.
- The model will generate an operating income statement that includes revenue and expense items specific to each facility type.

The financials will be presented in a line-item by line-item basis, which will lead to estimates of net operating income or loss. These will then feed a model that suggests the public's overall level of risk.

### **Task 6: Implications and Recommendations**

Based on the results of the analysis, HSP will provide implications, recommendations and opportunities that narrow the focus of the potential Project for a future assessment, note pitfalls to avoid and points to refine in order to protect the Client fiscally and insure the long-term viability of the proposed Project. Ultimately, HSP will recommend whether the Project deserves an additional, deeper feasibility and impact study.

**Larger District.** Additionally, there is a concept for a larger food, beverage and entertainment district associated with the project. HSP will comment on recommended next study steps for that, as part of this Project.

## **DELIVERABLES**

**Preliminary Findings Presentation Style Report** – HSP will present a report of preliminary findings via teleconference approximately four to five weeks after the kickoff. This will provide the Client with preliminary assumptions and general projections, as well as high-level comparable destination development profiles.

HSP will then work with the Client to determine next steps for the future of the Project.

All deliverables will be responsive to the Client's preference. HSP is flexible in its approach.

## TIMING & FEES

**Timing.** HSP proposes to complete the preliminary findings presentation style report approximately four to five (4-5) weeks after the kickoff.

**Fees.** HSP proposes to complete the Phase I high-level analysis for a lump sum fee of \$18,800, including research and any travel expenses (one trip is included). Fees will be billed according to the following schedule:

- Kickoff invoice to initiate work: \$9,400
- Final Draft of Presentation Style Report: \$9,400

Payments may be sent to:  
Hunden Strategic Partners  
688 N. Milwaukee Avenue, Suite 202  
Chicago, IL 60642  
(312) 643-2500