

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
APPLIED ECONOMICS**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of November 3, 2011, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Applied Economics, an Arizona partnership (the "Consultant").

RECITALS

- A. Pursuant to Section 3-3-10 of the Town Code, the Town may directly select consultants for professional and technical services.
- B. The Consultant possesses the specific skill and experience required to provide an economic and revenue impact analysis of a theater/mixed-use project in Fountain Hills Town Center (the "Services").
- C. The Town desires to enter into an Agreement with the Consultant for the Services.

AGREEMENT

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

- 1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until January 31, 2012 unless terminated as otherwise provided pursuant to the terms and conditions of 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 \$2,600.00 for the Services at the rate as set forth in the Scope of Work, attached hereto as Exhibit A.
- 4. Payments. The Town shall pay the Consultant upon completion of the Services and upon submission and approval of invoices. 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.

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

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

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

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

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

11. Insurance.

11.1 General.

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

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

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

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

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

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

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

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

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance

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

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

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

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

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

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

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

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

11.2 Required Insurance Coverage.

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

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

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Consultant shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

D. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than

under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

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

12. Termination; Cancellation.

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

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

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

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

12.5 Gratuities. The Town may, by written notice to the Consultant, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

12.6 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the

The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Consultant shall be relieved of any subsequent obligation under this Agreement.

13. Miscellaneous.

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

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

13.3 Laws and Regulations. Contractor 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 Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

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

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

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

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

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

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

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

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

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

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

13.14 Offset.

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

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

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

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

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

If to Consultant: Applied Economics
11209 N. Tatum Blvd, Suite 225
Phoenix, Arizona 85028
Facsimile: (602) 765-2400
Attn: Sarah E. Murley, Partner

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above

governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

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

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

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

13.19 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business

operations” shall have the meanings set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the Town determines that the Consultant submitted a false certification, the Town may impose remedies as provided by law including terminating this Agreement pursuant to subsection 12.2 above.

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

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

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

“Town”

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

Julie Ghetti
Julie Ghetti, Interim Town Manager

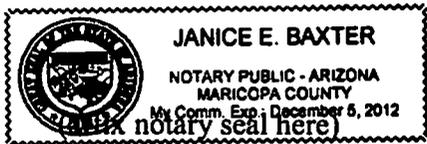
ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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



Janice E. Baxter
Notary Public in and for the State of Arizona

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

[Scope of Work]

See following pages.



October 14, 2011

Ms. Lori Gary
Economic Development Administrator
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Dear Lori,

Applied Economics is pleased to present this proposal to prepare an economic and revenue impact analysis of a theater/mixed use project in Fountain Hills. This analysis will help to quantify the value of the project to the town and can be used in negotiating an incentive agreement with the developer. We understand that the developer is planning to build a 60,000 square foot movie theater and two additional office/retail buildings on the 6 acre site.

Our impact analysis would include three components: construction impacts, operations impacts and local revenue impacts. We would rely on the town to provide detailed information about the project as required for the analysis. The balance of this letter describes our proposed scope of work for the analysis, as well as our estimated cost and timeline.

Task 1: Gather Baseline Information

The first step would be to gather information about the proposed project. We would rely on the town to assist us in compiling the following information.

Estimated land and construction costs for each the theater and retail/office buildings
Square footage by development component
Estimated sales per square foot for the retail and theater *(if this information is not known, data from ICSC Dollars & Cents of Shopping Centers will be used to estimate sales)*

We will then make additional assumptions about occupancy rates, employment and payroll for each development component. Also, assuming the office and retail space would be leased, we will make assumptions on lease rates if that information is not available from the developer.

Task 2: Estimate Economic Impacts

Economic impacts measure the effects of economic stimuli or expenditures in the local economy. These impacts would include direct and indirect jobs, personal income and economic activity or output that are supported by the theater, office and retail operations. Direct impacts are those resulting from the project itself. Indirect impacts are the result of the multiplier effect and capture supported supplier and consumer businesses and their employees in the area that would benefit from this project. In this case, we are proposing to look at the impacts on the Town of Fountain Hills. We would use data from IMPLAN, a national vendor of input-output modeling software to create industry-specific multipliers for the town. It is important to use geographically-specific multipliers in order to accurately gauge the impacts that could be captured within the local area.



Ms. Lori Gary
Page 2 of 2

The economic impacts would include construction impacts as well as on-going operations impacts. The proposed project would generate a significant amount of construction expenditures. As a result, a number of direct and indirect jobs, payroll and supplier demand will be generated. Although construction represents a non-recurring source of economic impacts, it can be significant during the construction period.

Once the development is completed, on-going impacts will be created by local supplier purchases associated with the theater as well as the office and retail tenants, along with local employee spending. We would use economic multipliers appropriate to the expected tenant mix, along with projected direct employment and payroll to model these operational impacts.

Task 3: Estimate Revenue Impacts

As a natural adjunct to the economic impacts, we would also estimate direct and indirect revenue impacts. Our analysis would include estimates of direct revenues generated by the businesses in the development as well as indirect revenues generated by employees living in Fountain Hills. These would include property and sales taxes. Revenue impacts are useful in understanding how the development will impact the town and how a tax incentive might be structured.

Task 4: Document Results

We would document the results of the impact analysis in a brief summary-style report. The report would include liberal use of tables and graphs to illustrate key points. We understand that the objective is to provide a third-party assessment of the potential economic benefits of this project and that the results would need to be easily understandable to a broad audience.

The cost for this analysis would be \$2,600. The project would be invoiced upon delivery of the report. We would be available to present the results of the analysis, if needed, on a time and expenses basis. We anticipate that the analysis could be completed within approximately two to three weeks from receiving all the necessary information. If you have any questions about the tasks described in this letter or require any further information, please do not hesitate to call. We appreciate the opportunity to provide this proposal to the Town of Fountain Hills.

Sincerely,

A handwritten signature in cursive script that reads "Sarah E. Murley".

Sarah E. Murley
Partner

Agreed to by: _____

Position: _____

Date: _____

**SPECIFIED PROFESSIONS PROFESSIONAL LIABILITY
POLICY RENEWAL CERTIFICATE**

Please attach this Renewal Certificate to your expiring Policy.

**UNITED STATES LIABILITY
INSURANCE COMPANY**

ORIGINAL

WAYNE, PENNSYLVANIA

In consideration of the renewal premium stated below, expiring Policy Number SP 1001223H is renewed for the Policy Period stated below. The Company will issue a complete copy of this Policy upon receipt of a written request from the Insured.

The New Policy Number is SP 1001223I.

The Application (if any) for this renewal, and all previous Applications made to the Company for this insurance, including any material submitted therewith, shall be made a part of this Renewal Policy as if physically attached hereto. PLEASE REFER TO YOUR POLICY FOR THE DEFINITION OF "APPLICATION."

POLICY DECLARATIONS

ITEM I. NAMED INSURED AND PRINCIPAL ADDRESS

**Applied Economics
11209 N. Tatum Blvd., Ste. 225
Phoenix, AZ 85028**

ITEM II. POLICY PERIOD: (MM/DD/YYYY)
FROM **1/31/2011** TO **1/31/2012**

12:01 AM STANDARD TIME AT
YOUR MAILING ADDRESS SHOWN

ITEM III. LIMITS OF LIABILITY: **\$1,000,000** EACH CLAIM
 \$1,000,000 ANNUAL AGGREGATE

ITEM IV. DEDUCTIBLE: **\$1,000** EACH CLAIM

ITEM V. PREMIUM: **\$3,388**

ITEM VI. RETROACTIVE DATE:**1/31/2000**

ITEM VII. Coverage Form(s)/Part(s) and Endorsement(s) made a part of this policy at time of issue:

| | |
|---|--|
| PROF-001 (06-01) Absolute Poll. Exclusion | * SP-AZ (07-09) Arizona State Amendatory Endt |
| PROF-002 (06-01) Mold, Fung., Bact, Virus, and Org. Path. Exc | * SP (07-09) Specified Professions Professional Liability |
| * SP-210 (07-09) Retroactive Date Endt | * SP Jacket (09-10) Specified Professions Professional Liability |
| * SP-212 (07-09) Amendment Of Definition Of Insured | |
| Endorsemen | |

Endorsements marked with an asterisk(*) have been added to the policy or have a new edition date and are attached with this certificate.

ITEM VIII. Solely in the performance of Professional Services as a(n) **Economic Research Consultant** for others for a fee.

Date Issued: **1/14/2011**

Agent: **BURNS & WILCOX, LTD. (AZ) [76]**

USU - SPILPRC (11/00)

By 
Authorized Representative

SCF General
3030 N. 3rd St PHOENIX, AZ 85012-3039

POLICY NO: G37962

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

TYPE OF OWNERSHIP: **Partnership**

OWNERSHIP NAMES:

Owners, if applicable, are shown on Endorsement 1070

Item 1. NAME OF INSURED

APPLIED ECONOMICS
11209 N TATUM BLVD STE 225
PHOENIX AZ 85028

Item 2. Policy Period FROM: 09/01/2011 TO 09/01/2012
12:01 a.m. Arizona Time at the address of the insured as stated herein

Item 3. A. Workers Compensation Insurance: Part One of the policy
Applies to the Workers Compensation Law of Arizona.

B. Employers Liability Insurance: Part Two of the policy applies
to work in Arizona

The limits of our liability under Part Two are:

Bodily Injury by Accident \$ **1,000,000** each accident
Bodily Injury by Disease \$ **1,000,000** each employee
Bodily Injury by Disease \$ **10,000,000** policy limit

C. Other States Insurance: Part Three of the policy applies to Arizona
Employers per the terms of the Other States Coverage Endorsement.

See Item 4, below for other workplaces not shown above.

THE COMPANY RESERVES THE RIGHT TO EXCLUDE COVERAGE UNDER PART TWO FOR REJECTORS
Item 4. Classification of Operations
Premium Period
Class Codes
The premium for this policy will be determined by our manual of rules, classifications, rates and rating plans. All information required below is subject to verification and change by audit.

| PREMIUM BASIS | RATES | ESTIMATED ANNUAL PREMIUM |
|-------------------------------------|---------------------------|--------------------------|
| Estimated Total Annual Remuneration | Rate Per \$100 of Payroll | |

| 5 | 11209 N Tatum Blvd Ste 225, Phoenix AZ 85028 | | 09/01/2012 | |
|-----------------------|--|-----------|------------|-------|
| 09/01/2011-09/01/2012 | 8742-005 SALESPERSONS OR COLLECTORS - OUTSIDE | \$61,502 | \$0.43 | \$264 |
| | 8810-005 CLERICAL OFFICE EMPLOYEES-N.O.C. | \$64,352 | \$0.21 | \$135 |
| | Manual Premium | | | \$399 |
| | Employer's Liability Limits @ 0.0275 | | | \$11 |
| | Employer's Liability Limits Balance to Minimum Premium | | | \$139 |
| | Policy Charge | | | \$180 |
| | Terrorism (See Attached Endor) | \$125,854 | \$0.01 | \$13 |
| | Catastrophe (See Attached Endor) | \$125,854 | \$0.01 | \$13 |

* THIS IS NOT A BILLING *

| | | | | |
|---|-----------------------|---------------------------------|--|--|
| If indicated, interim adjustments of premium shall be made: | Annual 100% De | Minimum Premium \$209 | Required Deposit Premium \$755 | Total Estimated Annual Premium \$755 |
|---|-----------------------|---------------------------------|--|--|

| | |
|---|----------------------------------|
| Endorsement Numbers | Endorsement Description Attached |
| 1005 1032A 1080 1065 1075 1080 1035 81310B 81310 81481C 81482D 811030 | |

Anniversary Rating Date: 09/01/2011

Donald A. Sumo

PRESIDENT

Countersigned 08/22/2011

Robert J. [Signature]

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/08/2011

PRODUCER
Dennis Blair, State Farm Insurance
9333 N 90th Street, Suite 105
Scottsdale, AZ 85258-5062

THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURED
RICK T & SARAH E BRAMMER
DBA APPLIED ECONOMICS
11209 N TATUM BLVD STE B225
PHOENIX, AZ 85028-3091

| | | |
|---|-------|-------|
| INSURER A: State Farm Fire and Casualty Company | 25143 | 25143 |
| INSURER B: State Farm Mutual Auto Insurance Company | 25178 | 25178 |
| INSURER C: | | |
| INSURER D: | | |
| INSURER E: | | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | ADD'L INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|----------|-------------|--|------------------|----------------------------------|-----------------------------------|--|--------------|
| A | X | GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | 93-GA-0839-8 F | 06/30/11 | 06/30/12 | EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 2,000,000 |
| | | | | | | MED EXP (Any one person) | \$ |
| | | | | | | PERSONAL & ADV INJURY | \$ |
| | | | | | | GENERAL AGGREGATE | \$ 4,000,000 |
| | | | | | | PRODUCTS - COMPROP AGG | \$ |
| | | | | | | | 0 |
| B | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS | 478 0231 D31 03L | 10/31/11 | 04/31/12 | COMBINED SINGLE LIMIT (Ea accident) | \$ 1,000,000 |
| A | X | <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | BODILY INJURY (Per person) | \$ |
| | | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | \$ |
| | | | | | | AGG | \$ |
| | | EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$ | | | | EACH OCCURRENCE | \$ |
| | | | | | | AGGREGATE | \$ |
| | | | | | | | \$ |
| | | | | | | | \$ |
| | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | | | | WC STATU-TORY LIMITS | OTH-ER |
| | | | | | | E.L. EACH ACCIDENT | \$ |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | \$ |
| | | | | | | E.L. DISEASE - POLICY LIMIT | \$ |
| | | OTHER | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

ADDITIONAL INSURED: Town of Fountain Hills, its agents, representatives, officers, officials and employees.

CERTIFICATE HOLDER

Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.