

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE TOWN OF PARADISE VALLEY

BROWN & ASSOCIATES**

THIS PROFESSIONAL SERVICES AGREEMENT ("**Agreement**") is made and entered into this 1 day of November, 2018 by and between the Town of Paradise Valley ("**TOWN**"), and Brown & Associates Certified Inspection Service, Inc. ("**Brown and Associates**" or "**Consultant**"), an Arizona corporation, whose principal place of business is located at 15601 North 40th Street, Building 130, Phoenix, Arizona 85032, each a "**Party**" and collectively "**Parties**."

RECITALS

WHEREAS, Five Star Development Resort Communities, LLC ("Five Star") is constructing a resort hotel, commercial facility, and residential dwelling units on property located in the proximity of Lincoln Drive and Mockingbird Lane with the Town (the "Project"); and

WHEREAS, pursuant to the 2015 Development Agreement, approved by Ordinance 696, Five Star has requested that the Town retain a third-party to perform plan review and inspection services on behalf of the Town for the Project; and

WHEREAS, any such services requested by Five Star shall be funded by Five Star in accordance with the terms of the 2015 Development Agreement; and

WHEREAS, the Town may have occasion to separately request plan review and inspection services for the Project from Brown and Associates, which services shall be paid for by the Town; and

WHEREAS, Brown and Associates uniquely possess the specific skill and experience required to perform the Services; and

WHEREAS, the Parties desire to enter into an agreement to whereby Brown & Associates shall perform the Services.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date set

forth above and shall remain in full force and effect until June 30, 2020, unless terminated as otherwise provided in this Agreement. At the Town's option, the term of this Agreement may be extended up to an additional six (6) months with the written approval of Brown & Associates.

2. Scope of Work. Consultant shall provide the services described in the Scope of Work attached hereto as **Exhibit A** and incorporated herein by reference ("Services"). Five Star and the Town may request Services from Consultant. Five Star shall designate in writing the person(s) authorized to request Services from Consultant. Only services specifically described in Exhibit A and authorized by the Town through approval of this Agreement shall be provided when requested of the Consultant by Five Star or the Town. Upon completion of an inspection requested by Five Star, Consultant shall obtain Five Star written confirmation that such inspection was completed.

3. Compensation. Town shall pay Consultant an amount not to exceed Two Hundred Forty Thousand Dollars (\$240,000) for the Services at the rates set forth in the Fee Schedule, attached hereto as **Exhibit A** and incorporated herein by reference.

4. Invoice Payments. Consultant will submit monthly invoices to the Town and Five Star no later than the fifth day of each month for the Services completed the prior month, and the invoices will be processed for payment as stated below. Each invoice shall be submitted to the Town and to Five Star to the person and address stated in the "Notices" section, below, or to such other person as may be designated in writing by the Town or Five Star.

4.1 Each invoice shall document and itemize all work completed during the prior month. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment, including Five Star's written confirmation of inspection Services.

4.2 Town and Five Star shall review each invoice and Town shall notify the Consultant in writing of any contested or disputed amount within 10 days of receipt of the invoice. Upon satisfaction of the Town's and/or Five Star's concerns, the invoice item will be processed for payment by the Town with the next monthly invoice after resolution.

4.3 Town shall pay Consultant all uncontested amounts within 30 days of the invoice date. If Town fails to pay an invoice when due, Consultant may suspend all Services until such invoice is paid in full, provided that Consultant shall first notify Town and Five Star in writing of the failure to pay the invoice within the 30-day period, after which Town shall have fourteen (14) days to cure the payment failure, and upon no cure having been made, to then suspend all Services.

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. 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.

8. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances at the same time and in the same locality.

9. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Town and each council member, officer, employee, volunteer 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.

10. Insurance. The Consultant must procure and maintain, until all of its obligations have been discharged, including any warranty periods under this Agreement are satisfied, the required minimum insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the work or services by the Consultant, his agents, representatives, employees, or Subcontractors.

10.1 Concurrently with the execution of this Agreement, the Consultant will furnish the Town a certificate of insurance on a standard insurance industry ACORD form.

10.2 Without limiting any obligations or liabilities of the Consultant the Consultant must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of B++6 or above with policies and forms satisfactory to Town. Failure to maintain insurance as required is a material breach of this Agreement and may result in cancellation of this Agreement at the Town's option.

10.3 No Representation of Coverage Adequacy: By requiring insurance, the Town does not represent that coverage and limits will be adequate to protect the Consultant, its agents, representatives, employees, Subcontractors or Subconsultants. Consultant is free to purchase any additional insurance as may be determined necessary. The Town will not pay for higher limits, but if the Consultant pays for insurance with higher limits, the Consultant will name the Town as additional insured on any additional insurance. The Town reserves the right to review any and all of the insurance policies and endorsements cited in this Agreement but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Consultant from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times required by this Agreement.

10.4 The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

10.5 Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Agreement by keeping coverage in force using the effective date of this Agreement as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Agreement and can never be after the effective date of this Agreement. Upon completion or termination of this Agreement, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option, or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Agreement.

10.6 Policy Deductibles and or Self-Insured Retentions: The Consultant is solely responsible for any deductible or self-insured retention amount. **Any self-insured retentions and deductibles must be declared to and approved**

by the Town. If not approved, the Town may require that the insurer reduce or eliminate any self-insured retentions with respect to the Town, its officers, officials, agents, employees and volunteers. Alternatively, the Town, at its option, may require the Consultant to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

10.7 Use of Subcontractors: If any work is subcontracted in any way, the Consultant must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as required of the Consultant in this Agreement. The Consultant is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

10.8 Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Agreement, the Consultant must furnish the Town with Certificate(s) of Insurance, or formal endorsements issued by the Consultant's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the Town will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the Consultant must forward renewal Certificates to the Town within 10 days after the renewal date containing all the necessary insurance provisions.

10.9. The policies are to contain, or be endorsed to contain, the following provisions:

10.9.1. For Commercial General Liability and Automobile Liability Coverages:

10.9.1.1. The Town, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Consultant including the Town's general supervision of the Consultant; Products and Completed Operations of the Consultant; and automobiles owned, leased, hired, or borrowed by Consultant.

10.9.1.2 The Town, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Agreement.

10.9.1.3. The Consultant's insurance coverage must be primary

insurance with respect to the Town, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the Town, its officers, officials, agents, and employees must be in excess of the coverage provided by the Consultant and must not contribute to it.

10.9.1.4. The Consultant's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

10.9.1.5 Coverage provided by the Consultant must not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.9.1.6 The policies must contain a waiver of subrogation against the Town, its officers, officials, agents, and employees for losses arising from work or services performed by the Consultant under this Agreement.

10.9.2. For Workers' Compensation and Employers Liability Coverage: The insurer must agree to waive all rights of subrogation against the Town, its officers, officials, agents, employee, and volunteers for losses arising from work or services performed by the Consultant for the Town.

10.10 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits except after first giving 30 days written notice, by certified mail, return receipt requested to: Town Manager, Town of Paradise Valley, 6401 East Lincoln Drive, Paradise Valley, Arizona 85253.

10.10.1. If the Consultant receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be CONSULTANT'S responsibility to provide notice within three (3) days of same to the Town.

10.11 Verification of Coverage. The Consultant must furnish the Town Certificate of Insurance ACORD form (or equivalent approved by the TOWN) and with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage's must be clearly noted on the Certificate of Insurance.

All certificates and endorsements are to be received and approved by the TOWN before Work commences. Each insurance policy required by this Agreement must be in effect on or before the earlier of commencement of work

under the Agreement or the signing of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement.

All Certificates of Insurance required by this Agreement shall be sent directly to the Town of Paradise Valley, Town Clerk's Office. The contract number must be included on the Certificate of Insurance. The Town of Paradise Valley shall be included as the "Certificate Holder." The Town reserves the right to require complete, certified copies of all insurance policies required by this Agreement, at any time.

10.12. Required Coverage:

10.12.1. Commercial General Liability: The Consultant must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 Products and Completed Operations Annual Aggregate, and a \$4,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

10.12.2. Professional Liability: The Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose acts, mistakes, errors and omissions the Consultant is legally liable, with a liability insurance limit of \$3,000,000 each claim and \$4,000,000 all claims. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for seven (7) years past completion and acceptance of the work or services, the Consultant must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.

10.12.3. Vehicle Liability: The Consultant must maintain Business Automobile Liability insurance with a limit of \$2,000,000 each accident on the 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. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

10.12.4. Workers Compensation Insurance: The Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Consultant's

employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

10.12.5. Umbrella/Excess Liability: Umbrella/Excess Liability insurance with a limit of not less than \$5,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, Professional Liability, and Employer's Liability, as required above.

11. Reserved.

12. Termination; Cancellation.

12.1 For Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause at any time after receipt by Consultant of written notice by the Town. If terminated, Consultant must immediately stop all work and will immediately cause any of its suppliers and Subcontracts to stop work. Upon termination for convenience, Consultant shall be paid for all undisputed Services performed to the termination date.

12.2 For Cause. Except for the failure to make payments, which is governed by Section 4, if any 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 60 days. In the event of such termination for cause, Consultant shall be paid for all undisputed Services performed to the termination date. If the Town improperly cancels the Agreement for cause, the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Agreement.

12.3 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.

12.4 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.

12.5 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 and Five Star 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 and Five Star hereby waive 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 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. The Parties agree that the proper jurisdiction and venue for any proceeding arising out of this Agreement shall be in the State of Arizona, County of Maricopa.

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 Parties.

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 any 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 any 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 and transaction privilege taxes, including any interest or penalties.

13.14 Notices. 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 (or to any other address the Parties may substitute by giving written notice):

If to CONSULTANT:

Michael J. Brown
President
Brown & Associates Certified Inspection Services, Inc.
15601 North 40th Street, Building 130
Phoenix, Arizona 85032

If to the TOWN:

Town of Paradise Valley
Attn: Town Manager
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

With a required copy to:

Town of Paradise Valley
Attn: Town Attorney
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

If hand delivered, Notices are received on the date delivered. If delivered by certified or registered mail or by overnight delivery service, Notices are received on the date indicated on the receipt. **Notice by facsimile or electronic mail is not adequate notice.**

13.15 Records. The Town may audit all of the Consultant's records, calculations, and working documents pertaining to this work at a mutually agreeable time and place. Records of Consultant direct labor costs, payroll costs, and reimbursable expenses pertaining to the project covered by the Agreement will be kept

on a generally recognized accounting basis and made available during normal business hours upon reasonable notice.

13.16 E-Verify Requirements. If and to the extent A.R.S. §41-4401 is applicable to this Agreement, Consultant shall comply with laws regarding workers as follows:

Consultant warrants to Town that Consultant and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that Consultant and all its subcontractors now comply with the E-Verify Program under A.R.S. §23- 214(A).

A breach of the foregoing warranty by Consultant shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

Town retains the legal right to inspect the papers of any employee of Consultant or any subcontractor who works on this Agreement to ensure that they or the subcontractor is complying with the warranty given above.

Town may conduct random verification of Consultant and its subcontractors' employment records to ensure compliance with the warranty given above.

Consultant shall indemnify, defend and hold Town harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above

13.17 Israel Boycott. 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.

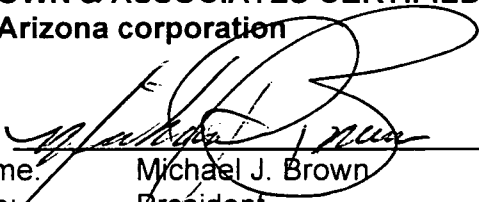
13.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work or the Fee Schedule, the documents shall govern in the order listed herein.

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 accepted, made and executed this Agreement upon the terms, conditions and provisions above stated, the day and year first above written.

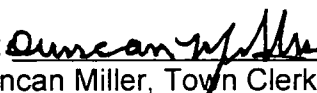
BROWN & ASSOCIATES CERTIFIED INSPECTION SERVICES, INC.
an Arizona corporation

By: 
Name: Michael J. Brown
Title: President

TOWN OF PARADISE VALLEY, ARIZONA,
an Arizona municipal corporation

By: 
Brian Dalke
Its: Interim Town Manager

ATTEST:

By: 
Duncan Miller, Town Clerk



APPROVED AS TO FORM:


By: 
Andrew M. Miller, Town Attorney

EXHIBIT "A"

Scope of Work and Fee Schedule (see attached)



EXHIBIT A – SCOPE OF WORK

A. PLAN REVIEW SERVICES

BROWN & ASSOCIATES shall, upon the request of the TOWN OF PARADISE VALLEY (“TOWN”), provide BUILDING PLAN REVIEW SERVICES to ensure compliance with Codes and Ordinances as adopted by the Town. Review time for plans shall be in accordance with the following table:

PROJECT TYPE / SIZE	STANDARD REVIEW	EXPEDITED REVIEW	SUBSEQUENT RECHECKS
Single & Multi-Family Residential	5 to 10	5	5
Commercial to 75,000 sq. ft.	10	5	5
Commercial 75,001 to 150,000 sq. ft.	12 to 15	7	5 to 10
Commercial greater than 150,000 sq. ft.	15	8	7
Warehouse 150,001 to 500,000 sq. ft.	20	10	10
Warehouse 500,001 to 1,000,000+ sq. ft.	30	15	15
Fire Protection Systems & Civil Review	5 to 10	5	5
Deferred Submittals	Same turnaround as initial review		

B. PROJECT MANAGER SERVICES

BROWN & ASSOCIATES shall provide PROJECT MANAGER SERVICES to ensure compliance with all applicable codes, standards and project specifications. Services include requested attendance of project OAC meetings, review of RFI's and ASI's, coordination and communication with project team representatives, project oversight for services, identify any non-compliance and/or design issues and assist with recommendations and alternatives for resolutions, and interface with all other agencies and departments. Services also include quality assurance inspections upon project phase completion and coordination with the final owner punch list.

C. BUILDING AND CIVIL INSPECTION SERVICES

BROWN & ASSOCIATES shall provide BUILDING AND CIVIL INSPECTION SERVICES to ensure compliance with all applicable codes, standards and project specifications. Inspection Services include; daily field observation reports documenting any issues that arise on-site, reporting any defects, deficiencies, and quality issues or concerns, attendance of requested project meetings, and photographs of work being performed during the course of the construction schedule. Building Inspection services include monitoring construction for adherence to the requirements listed on the approved construction documents under the disciplines of Architectural, Structural, Mechanical, Plumbing, Electrical, Model Energy, Accessibility, and Civil. The Town of Paradise Valley will be providing Fire Safety Inspection services.



Normal hours of inspection services for determination of Brown & Associates fees is at a schedule of Monday through Friday from 7:00 AM- 3:00 PM Arizona time. Inspection times may be adjusted based on seasonal conditions and not to exceed an agreed upon 8-hour work day. Expedited, before or after hour, weekend and holiday inspection services are available for one and a half times the regular hourly rate for personnel provided with a three-hour minimum. Brown & Associates Holiday Schedule includes: New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Inspection notification shall be executed with an agreed upon fax or e-mail process from the Contractor and shall be submitted to B&A by 3:00 PM Arizona Time, 24-hours prior to the date of inspection. Requests received after the deadline will be subject to additional fees. A three-hour window will be provided for all requested inspections.

D. ADMINISTRATION SERVICES

BROWN & ASSOCIATES shall provide ADMINISTRATION SERVICES to ensure compliance with Codes and Ordinances as adopted by the TOWN. Services include but are not limited to: processing and scheduling requests and field reports, project document control, processing review letters, distribution and coordination to the project team, permit tracking, records management, and quality assurance of project documents.

E. MISCELLANEOUS BUILDING SAFETY SERVICES

BROWN & ASSOCIATES shall, when authorized by TOWN, perform such additional Building Safety functions as requested.

BROWN & ASSOCIATES shall have the protection from liability afforded by applicable International Building Code to maximum extent permitted by law when BROWN & ASSOCIATES is acting pursuant to the provisions of such section outlined in this Exhibit A – Scope of Work. This provision is not intended and shall not operate in any way to increase Agency's liability or to decrease its lawful immunity from liability.



EXHIBIT A – FEE SCHEDULE

A. PLAN REVIEW SERVICES

For BUILDING PLAN REVIEW SERVICES of Architectural, Structural, Mechanical, Electrical, Plumbing, Accessibility and Model Energy performed for the Client, BROWN & ASSOCIATES shall be compensated at a lump sum rate of 75% of the Plan Check Fee calculated pursuant to the current International Code Council Building Valuation Data (ICC BVD) and B&A Permit Fee Table 1-A for an initial review and one complete recheck of the project documents. Third and subsequent, Fire and Civil review, deferred submittals, and revisions to approved plans will be at BROWN & ASSOCIATES hourly rates for personnel provided. Expedited plan review services are available at a rate of twice the calculated or hourly rate as agreed upon at acceptance of project.

PERMIT FEE TABLE 1-A

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$60.00
\$501.00 to \$2,000.00	\$59.88 for the first \$500.00 plus \$4.09 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,000.01 to \$25,000.00	\$121.26 for the first \$2000.00 plus \$14.00 for each additional \$1000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$553.25 for the first \$25,000.00 plus \$13.54 for each additional \$1000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$891.99 for the first \$50,000.00 plus \$9.39 for each additional \$1000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$1361.54 for the first \$100,000.00 plus \$7.50 for each additional \$1000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$4366.58 for the first \$500,000.00 plus \$6.38 for each additional \$1000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and above	\$7552.77 for the first \$1,000,000.00 plus \$4.90 for each additional \$1000.00, or fraction thereof.



B. PROJECT MANAGER, INSPECTION AND ADMINISTRATIVE SERVICES

For PROJECT MANAGER, INSPECTION, AND ADMINISTRATIVE SERVICES performed under this Exhibit A of the Agreement, BROWN & ASSOCIATES shall be compensated at hourly rates for personnel provided. A minimum 2-hours will be assessed for inspections on a given day.

Code consultation will be recorded in time increments of 1/10 of one hour. Certain code consulting services will be charged in a minimum time increment, unless a greater amount of time is actually expended. Examples of such minimum time increments are as follows: telephone calls at a minimum of 0.2 hours; and correspondence of emails (received and sent) at a minimum of 0.2 hours.

Normal hours of inspection services for determination of Brown & Associates fees is at a schedule of Monday through Friday from 7:00 AM- 3:00 PM Arizona time. Inspection times may be adjusted based on seasonal conditions and not to exceed an agreed upon 8-hour work day. Expedited, before or after hour, weekend and holiday inspection services are available for one and a half times the regular hourly rate for personnel provided with a three-hour minimum. Brown & Associates Holiday Schedule includes: New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Inspection notification shall be executed with an agreed upon fax or e-mail process from the Contractor and shall be submitted to B&A by 3:00 PM Arizona Time, 24-hours prior to the date of inspection. Requests received after the deadline will be subject to additional fees. A three-hour window will be provided for all requested inspections.

HOURLY RATES

Building Official	\$125
Project Manager	\$125
Structural Engineer	\$125
Fire Protection Engineer	\$125
Civil Engineer	\$125
Senior Plans Examiner	\$100
Senior Building Inspector	\$100
Building Inspector	\$90
Senior Permit Specialist	\$70
Clerical / Administration	\$60

All building safety consulting services provided will be invoiced for hours spent by the specific staff member on a task for the project. BROWN & ASSOCIATES will provide an itemized breakdown of hours and description of the task, and shall also provide a monthly status report on the project (Schedule of Values).



TYPICAL REQUIRED BUILDING INSPECTIONS

Brown & Associates will verify that the work being done conforms to the various codes, regulations, laws, and ordinances applicable to that job. Our inspectors will also check to ensure the work agrees with the approved set of plans issued with the permit. The approved set of plans and the building permit issued must be available to the inspector.

The following checklist is intended to assist contractors and owner-builders in the inspection process. The checklist is provided to make the inspection process more efficient for the contractor and the inspector. It has the basic inspection conditions required and some of the most common corrections inspectors find at many required inspections. The checklist does not contain all possible inspections, but the most common ones noted at each stage of construction. This is not intended to be a complete list of items to be checked. Although they all may not be applicable to your particular project, please use it as a general guideline:

1. **TEMPORARY CONSTRUCTION POWER**

Temporary power installations will be inspected after the meter set, disconnect, and ground fault protected receptacles are installed on the building site. The permit for the temporary power can be included with the main building permit or can be a separate permit if installation is needed prior to main building permit issuance.

2. **FOOTING INSPECTION**

This is done after the footing has been formed and any reinforcing steel is installed and prior to the placement of concrete. Any prescribed below-grade vapor barrier and/or insulation must be in place.

3. **FOUNDATION INSPECTION**

This is done after the foundation walls have been formed and the reinforcing steel is installed and prior to placement of concrete. Any prescribed below-grade vapor barrier and/or insulation must also be in place.

4. **MASONRY PRE-GROUT INSPECTION**

This is done after the masonry has been installed, after all required reinforcing for the wall has been completed and prior to placement of grout.

5. **RETAINING WALLS AND FOUNDATIONS**

This is done after the footing has been formed, after all required reinforcing steel is installed and prior to the placement of concrete. Any prescribed below-grade vapor barrier and/or insulation must be in place. A second inspection for any cast in place walls is required once the reinforcing steel has been installed.

6. **ROUGH-IN UNDERGROUND PLUMBING**

This is done after the underground and/or under slab plumbing is installed but prior to it being covered. Testing of the system as required by code shall be in place at the time of inspection.

7. **ROUGH-IN UNDERGROUND ELECTRICAL**

This is done after the underground and/or under slab electrical conduit is installed but prior to it being covered.

8. **SEWER INSPECTION**

This is done when the building sewer (that portion of the drainage system from two feet outside the building to public sewer) is installed, and prior to it being covered. Testing of the system as required by code shall be in place at the time of inspection.



9. **WATER SERVICE**

This is done when the water service piping from the water authority stop valve to the building is in place and prior to it being covered. Testing of the system as required by code shall be in place at the time of inspection.

10. **WATER METER SETTING INSPECTION**

The water meter setting must pass inspection before the Certificate of Occupancy or a Temporary Certificate of Occupancy can be issued. Utility authority approval is also required.

11. **GAS LINE TEST**

This shall be made after gas piping, fittings, unions, and valves have been installed and before any such piping has been covered or concealed or any fixture or appliance has been attached thereto. Testing of the system as required by code shall be in place at the time of inspection.

12. **DWV AND WATER SUPPLY INSPECTION**

This is done after the above ground plumbing (water and drainage piping) is installed, prior to the framing inspection. Piping must not be covered until after the framing inspection, and where applicable, concurrent with the framing inspection. Testing of the system as required by code shall be in place at the time of inspection.

13. **ELECTRICAL SERVICE ENTRANCE SECTION INSPECTION**

This is done when prior to the electrical meter being set. The electrical service equipment must be installed, properly bonded and connected to a grounding electrode system. This inspection authorizes the utility authority to energize equipment when requested by the contractor and/or owners representative. All energized parts should be suitably protected against accidental contact after they are energized. A lockout tag out procedure shall be provided to the inspector if requested.

14. **ROUGH MECHANICAL INSPECTION**

This is done after all mechanical equipment, vents, and duct work has been installed. This inspection should also precede or be concurrent with the framing inspection.

15. **ELECTRICAL ROUGH-IN INSPECTION**

This is done after the premises wiring system and/or conduit system has been installed, and it should precede or be concurrent with the framing inspection.

16. **SHEAR WALL, ROOF AND DIAPHRAGM INSPECTION**

This is done when all shear walls are installed, hold downs and wall anchorage is installed, vertical and horizontal diaphragms (floor and/or roof) are installed, and fastening of the diaphragm is completed, and all hardware and required structural bracing is in place.

17. **FRAME AND ROOF INSPECTION**

This is done after the structures walls, floors, and other framing members are in place, after the exterior sheathing has been installed and after the wall and roof vapor barrier is installed. The walls and roof must be completed to the point where the building interior can be considered weather protected. All of the sub-systems such as plumbing, mechanical, and electrical must be inspected prior to the installation of wallboard, interior sheathing and insulation.

18. **FIRE SPRINKLER ROUGH INSPECTION**

This is done during rough inspection and prior to the insulation and wall board inspection or during the same time. It includes an inspection of the fire sprinkler piping and testing of a zone or the entire system.

19. **FIRE ALARM ROUGH INSPECTION**

This is done prior to, or during the same time as the building framing inspection. All fire alarm conduit, boxes and equipment locations shall be identified or installed.



20. FIRE RESISTANCE RATING INSPECTION

These inspections are conducted during the course of construction to verify the fire resistance rating of assemblies, penetrations, and openings are installed. Spay applied fire resistance rating inspections for structural elements are considered as a special inspection not conducted as part of this building inspection.

21. INSULATION INSPECTION

After approval of the framing and rough mechanical, electrical and plumbing inspections insulation shall be installed. Prior to the installation of wallboard, an insulation inspection is required to verify proper R values, air sealing and fire blocking is installed.

22. ABOVE CEILING INSPECTION

This is done when all work contained above the ceiling has been completed. This includes, but is not limited to mechanical, plumbing, electrical, low voltage, penetrations, fire sprinkler/alarm installation, and special systems installation.

23. WALL BOARD

This is done when all wall board is in place and before joints and fasteners are taped and finished. This inspection may also include the exterior of the building prior to the installation of exterior finish systems such as EIFS and lath/stucco.

24. ENVELOPE INSPECTIONS

Envelope Inspection services include review and observation during the installation of the interior and exterior waterproofing systems, product utilization, quality of work, and documentation of any non-conformance issues

25. SPECIAL FIRE/LIFE SAFETY SYSTEMS TESTING AND FINAL

Inspections for special fire/life safety systems such as smoke control and emergency power systems are required during installation and prior to the building final inspection. Testing may also be required based on the system design. Special inspections are required for some systems based on the design and project specifications. Those special inspections are in addition to those listed in this document.

26. FIRE SPRINKLER AND FIRE ALARM FINAL

This is done prior to, or during the building final inspection. All equipment and devices shall be installed and tested at this time.

27. FINAL INSPECTION

This is done after all work indicated in the approved construction documents has been completed. This inspection is to be called for, and passed, prior to building occupancy.

MISCELLANEOUS INSPECTIONS

Inspection of miscellaneous site elements including, but not limited to, site accessibility, site walls, underground electrical, flag poles, light pole bases, gates, concrete pads, etc. may be required based on the project design.

NOTE: *Special inspections required by the Building, Mechanical, Plumbing, Electric and Fire code are not included as part of Brown & Associates scope of services. Special inspections shall be in addition to the required inspections listed above. Refer to applicable codes and standards used in the design of the project for requirements. Site civil inspections related to earthwork, concrete curbs, asphalt, storm drain, offsite sewer/water, site hardscape, landscaping, irrigation and other related horizontal construction not specifically listed above are not included in the scope of inspections provided by Brown & Associates.*



NOTICE TO BUILDING PERMIT HOLDER

Please be advised the building permit holder is responsible for the following.

1. Notifying Brown & Associates when the project is ready for inspection. Do this by submitting an Inspection Request to inspect@planreviewandinspections.com or calling 480-991-3751 and be ready to provide the permit number, address, and type of inspection needed. **Deadline for Request:** All requests must be received by 3:00 PM Arizona Time, 48-hours prior to the date of inspection. Requests received after the deadline is subject to additional fees.
 - Inspection Time may be adjusted based on seasonal conditions. A three-hour window will be provided for all requested inspections. Inspection times that exceed the agreed upon 8-hour work day will be considered After Hours Inspections.
 - After Hours, Holidays and Weekend Inspections will be mutually agreed upon before scheduling and subject to additional fees.
 - A re-inspection fee may be assessed for each inspection or re-inspection when such portion of work for which inspection is called is not complete or when corrections called for are not made.
2. Providing access and means for inspections, including:
 - Ensuring the components to be inspected are readily visible and are not concealed or permanently covered; and
 - Ensuring access to the work to be inspected is readily available by temporary stairs, ladder, or other necessary means to perform the inspection.
3. The building inspectors can walk inspections without a superintendent or job foreman onsite, it is always advisable to walk the inspection with the building inspector. This improves the communication link and adds value to the time taken out of the schedule for required inspections.
4. Maintaining the permit on active status to avoid expiration. Do this by commencing the work that was authorized by the permit and scheduling and inspection within 180-days from the date of the permit issuance. If no inspections have been scheduled within 180-days from the date of permit issuance, or if the period between inspections exceeds 180-days, the permit will automatically become null and void, without further notice to the permit holder, unless the building permit holder notifies Brown & Associates, in writing, of their need for an extension.

A building permit holder may be granted a 180-day extension provided they are able to show that circumstances beyond the control of the permit holder prevented the commencement of the work that was authorized by the permit. This extension request must be made prior to the expiration date of the permit. If any expiration period passes and no extension is requested or granted, the building permit holder must obtain a new permit in order to recommence the work.