

CON-21-157-TMG

SERVICES AGREEMENT
with
SCUTARI AND CIESLAK, INC.

This Services Agreement ("Agreement") is entered into and effective between the TOWN OF PARADISE VALLEY, an Arizona municipal corporation ("Town") and SCUTARI AND CIESLAK, INC. d/b/a S+C COMMUNICATIONS, whose principal place of business is 4144 North 44th Street, Suite A-2, Phoenix, Arizona 85018 ("Consultant") (individually "Party" and collectively "Parties") as of the 16 day of February __, 2021 ("**Effective Date**").

RECITALS

- A. Town desires to contract with Consultant to provide public relations and media services (the Project); and
- B. Town desires to retain the services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit A**, Project Scope of Services ("Scope of Services"); and
- C. Consultant desires to do, perform and carry out in a satisfactory and proper manner, as determined by the Town, the services set forth in this Agreement, including all exhibits ("Services"); and
- D. Town and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Agreement and are hereby incorporated.
2. **Key Personnel; Other Consultants and Subconsultants.**
 - 1.1 Services. Consultant will provide all Services necessary to assure the Project and the Scope of Services are completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with Town and its designated employees, and working closely with others, including other consultants or vendors, retained by the Town.
 - 1.2 No Delegation or Assignment. Consultant shall not delegate any duty under this Agreement, and no right or interest in this Agreement shall be assigned by Consultant to any successor entity or third party, including but not limited to an affiliated successor or purchaser of Consultant or its assets, without prior written permission of the Town. The Town, at its option, may cancel this Agreement in the event Consultant undertakes a delegation or assignment without first obtaining the Town's written approval. Consultant agrees and acknowledges that it would not be unreasonable for the Town to decline to approve a delegation or assignment that results in a material change to the services provided under this Agreement or an increased cost to the Town.
2. **Contract Term; Renewal.** The term of this Agreement commences upon the Effective Date and continues for a period of one (1) year, unless sooner terminated as provided herein. The Town may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional four (4) years in one-year increments or as otherwise agreed to by the Parties. In no event shall the term of this Agreement, including all extensions, exceed five (5) years.
3. **Consultant's Work.**
 - 3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2. Independent Consultant Status. Consultant shall be an independent contractor and shall have responsibility for and control over the details and means of providing the Services under this Agreement.

3.3 Licensing. Consultant warrants that:

- a. Consultant currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) Town is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
 - (2) Consultant must notify Town immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify Town as required will constitute a material default under the Agreement.

3.4 Compliance.

- a. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by Town.
- b. Consultant must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, U.S. military veteran status or any disability. Consultant will require any Sub-consultant to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subconsultants, warrants compliance with this section.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to Town exclusive ownership of any and all copyrights, if any, to communication plans, media plans, evaluations, reports, drawings, manuals, as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend Town for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to Town copies of the preliminary and completed Work Product promptly as they are prepared or as otherwise instructed by the Town.
- c. Town Use.
 - (1) Town may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, to the fullest extent permitted by law the Town agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, Town will also remove any seal and title block from the Work Product.

4. Compensation for the Project.

5.1 Compensation. Consultant will be paid on an hourly basis for Services at the rate of Two Hundred dollars (\$200) per hour. Services rendered by the Consultant, including those furnished by any Subconsultants, shall not exceed Thirty Thousand Dollars (\$30,000).

5. Billings and Payment.

5.1 Applications.

- a. Consultant will submit invoices (each, a "Payment Application") to Town's Project Manager and Town will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one month or as otherwise agreed upon by the Parties.

5.2 Payment.

- a. After a full and complete Payment Application is received, Town will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon Town's receipt of:
 - (1) Completed work generated by Consultant and its Subconsultants; and
 - (2) Unconditional waivers and releases on final payment from all Subconsultants as Town may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. Town's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. Town may withhold an amount sufficient to pay expenses that Town reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 For Convenience. Town may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the Town. Such approval shall be written and is subject to the sole discretion of the Town.

6.2 For Cause. Town may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven (7) days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after Town has determined its damages. If Town's damages resulting from the breach, as determined by Town, are less than the equitable amount due but not paid Consultant for Services furnished, Town will pay the amount due to Consultant, less Town's damages, in accordance with the provisions of Sec. 5.
- b. If Town's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to Town immediately upon demand.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on Town's behalf becomes an employee, agent, or Consultant of any other Party to this Agreement.

8. **Insurance and Indemnification.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project and provide Services. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any Subconsultants.

8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 093 or equivalent thereof, 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, contractual liability, independent consultants, products-completed operations, personal injury, broad form property coverage, XCU hazards if requested by the Town, and advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This commercial general liability insurance must include a separation of insurance provision.
- b. Automobile Liability: A Business Automobile Liability Insurance policy providing a liability limit of at least \$1,000,000 each occurrence and covering Consultant's owned, non-owned and hired automobiles assigned to or used in the performance of Consultant's Services under this Agreement.
- c. Professional Liability: Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. Professional Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Agreement. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and Consultant shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.
- d. Worker's Compensation: Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance Services under this Agreement, and shall also maintain Employer Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

8.2 Indemnification.

- a. To the fullest extent permitted by law, Consultant must pay, defend, indemnify, and hold harmless Town and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than Town or Consultant) and that arise out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including

any Subconsultant or Subconsultant or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
 - c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.
 - d. Insurance provisions set forth in this Agreement are separate and independent from the Indemnification requirements and provisions of this Agreement and shall not be construed in any way to limit the scope and magnitude of the Indemnification requirements and provisions. The Indemnification requirements and provisions of this Agreement shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.
- 8.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:
- a. **The Town, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all Services and/or tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
 - b. For any claims related to this Project, the **Consultant's insurance coverage shall be primary insurance** with respect to the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the Town.
- 8.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A+, unless the Consultant has obtained prior approval from the Town stating that a non-conforming insurer is acceptable to the Town.
- 8.5 **Waiver of Subrogation.** **Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire** from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the Town for all work performed by the Consultant, its employees, agent(s) and subconsultant(s).
- 8.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement or before work begins, whichever is earlier, Consultant shall furnish the Town with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the Town before work commences. Failure to obtain, submit or secure the Town's approval of the required insurance policies, certificates or endorsements prior to the Town's

agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The Town reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the Town's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

- 8.7 Subconsultants. Consultant shall require and shall verify that all subconsultants maintain insurance meeting all requirements of this Agreement.
- 8.8 Special Risk or Circumstances. The Town reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.
9. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Consultant warrants compliance and that of its subconsultants with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Consultant or subconsultant's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the Town under the terms of this Agreement. The Town retains the legal right to randomly inspect the papers and records of the other Party to ensure that the other Party is complying with the above-mentioned warranty. The Consultant and subconsultant warrant to keep their respective papers and records open for random inspection during normal business hours by the other Party. The Parties shall cooperate with the Town's random inspections, including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
10. **Boycott of Israel Prohibited:** To the extent A.R.S. § 35-393 et seq. is applicable to this Agreement, Consultant warrants that it is not and will not participate in prohibited activity during the Term or any renewal or extension Term in contravention of the statute. A.R.S. § 35-393 prohibits the Town from contracting in an amount of \$100,000 or more with a for-profit company that is participating in a boycott of goods and services from Israel.
11. **Notices.**
- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested). Delivery by e-mail or facsimile is not sufficient.
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

S+C Communications
Chip Scutari, Principal
c/o 4144 N. 44th St.
Phoenix, AZ 85018

- b. Town. The Town's representative ("Town's Representative") authorized to act on Town's behalf, and his or her address for Notice delivery is:

Town of Paradise Valley
c/o Jill Keimach
6401 E. Lincoln Drive
Paradise Valley, Arizona 85253

With required copy to:

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

- c. Concurrent Notices.

- (1) All notices to Town's representative must be given concurrently to Town Manager and Town Attorney.
- (2) A notice will not be deemed to have been received by Town's representative until the time that it has also been received by the Town Manager and the Town Attorney.
- (3) Town may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. Changes. Consultant or Town may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least seven (7) days prior to the change.

12. **Additional Provisions.**

12.1 Integration. This Agreement contains the entire agreement between Town and Consultant and supersedes all prior conversations and negotiations between the Parties regarding the Services or this Agreement.

12.2 Interpretation.

- a. The Parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The Parties are of equal bargaining position and this Agreement must be construed equally between the Parties without consideration of which of the Parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

12.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every

other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

- 12.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the Parties. Any amendment may be subject to Town Council approval.
- 12.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 12.6 Right to Assurance. Whenever one Party to this Agreement in good faith has reason to question the other Party's intent to perform, he may demand that the other Party give a written assurance of his intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory repudiation of the Agreement.
- 12.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 12.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. Project Manager. The Town's Project Manager for the Project is:

Name: Jill Keimach
Contact: jkeimach@paradisevalleyaz.gov; (480)348-3533

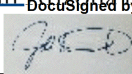
15. Dispute Resolution. Each claim, controversy and dispute (each a "Dispute") between Consultant and Town will be resolved in accordance with **Exhibit C**. The final determination will be made by the Town.

16. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

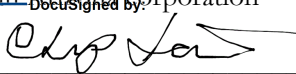
- Exhibit A Scope of Services
- Exhibit B Dispute Resolution

The Parties enter into this Agreement effective as of the date shown above.

TOWN OF PARADISE VALLEY,
an Arizona municipal corporation

DocuSigned by:

CE1DC3A7429445A...
By: Jill Keimach
Its: Town Manager

SCUTARI AND CIESLAK, INC.
an Arizona corporation

DocuSigned by:

528ECD56ADEF486...
By: Chip Scutari
Its: Principal

ATTEST:

DocuSigned by:

FD56FF07A95043D...
Duncan, Miller, Town Clerk

DocuSigned by:

(SEAL)

APPROVED AS TO FORM:

DocuSigned by:

C4D96C022896478...
Deborah Robberson, Acting Town Attorney

EXHIBIT A
Services Agreement
Scutari and Cieslak, Inc.

SCOPE OF SERVICES

- Conduct a Discovery Session with PARADISE VALLEY key team members to immerse ourselves in your community, your target audiences, your goals and objectives. This Discovery Session helps build the foundation of a communications plan that will resonate with PARADISE VALLEY'S key audiences and targets.
- Draft and edit a Key Message Ladder
- Develop an Earned Media Plan to build a calendar of stories every month in targeted media outlets
- Partner with PARADISE VALLEY to assist in drafting media statements, which could include timely, relevant press releases, Op Eds, LinkedIn blogs and story pitches.
- Help coordinate media interviews when needed.
- Participate in monthly Zoom meetings or when needed.
- Provide PR counsel and advice.

EXHIBIT B
Services Agreement
Scutari and Cieslak, Inc.

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The Parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the Parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement, including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A Party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other Party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the Parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The Parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The Parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both Parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the Parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with applicable Rules of the American Arbitration Association ("AAA"), as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The Parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the Parties have not agreed upon an arbitrator within this period, the Parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, (or other law firm amenable to the Parties) who will then select the arbitrator. The Parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial or municipal legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering Party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Paradise Valley, Arizona unless otherwise agreed by the Parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the Parties as the final judgment and may not independently alter or modify the awards sought by the Parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing Party may enter the arbitration decision in any court having jurisdiction in order to convert it to a judgment. The non-prevailing Party will pay all of the prevailing Party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and Town will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. Town and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with Town and Consultant.
- 4.2 Liens. Town or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by Town of Paradise Valley Community Development Department or any other agency of Town acting in its governmental permitting or other regulatory capacity.