

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made and entered October 22nd, 2015, by and between the Town of Paradise Valley, an Arizona municipal corporation (the “Town”) and Andrew M. Miller (“Miller” or “Attorney”).

### **RECITALS**

- A. The Town desires to continue to employ Miller as Town Attorney of the Town.
- B. It is the desire of the Council of the Town of Paradise Valley (the “Town Council”) to provide certain benefits, to establish certain conditions of employment and to set working conditions for Miller.
- C. Miller desires to accept continued employment as Town Attorney of the Town.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are hereby incorporated into and are deemed an integral part of this Agreement, the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the parties hereto, the Town and Miller hereby agree as follows:

1. Duties.

1.1 The Town agrees to employ Miller as Town Attorney to perform the functions and duties specified in the Town Code (Article 3-3 and applicable ordinances), and the Town Attorney Position Description and to perform such other legally permissible and proper duties and functions as the Town from time to time may assign.

1.2 The Attorney shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all ordinances, rules and regulations established by the Town.

1.3 The Attorney agrees to devote his full time efforts to the Town and to remain in the exclusive employ of the Town during the term of this Agreement. However, the Attorney may engage in occasional teaching, writing, or consulting performed on Attorney’s time off so long as such activities do not conflict with the Attorney’s obligations to the Town. Except as otherwise provided by this subsection, the Attorney may not accept other employment or become employed by any other employer until the termination date.

1.4 The Town shall fix any other terms and conditions of employment as it may determine to be desirable, from time to time, relating to Miller’s performance, provided that such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Paradise Valley Town Code or any other law.

2. Term. The term of employment is at will and shall be from the date written above until terminated by either party in accordance with the provisions set forth herein.

3. Severance.

3.1 In the event Attorney is terminated by the Town Council without cause while still willing, qualified and able to perform the duties of Town Attorney under this Agreement, then the Town Council agrees to pay Attorney, in addition to any other amounts that may be due Attorney at the time of termination of employment, an amount equal to six months aggregate salary, benefits and deferred compensation. However, if Attorney voluntarily terminates his employment or if he is terminated for cause based upon dishonesty, fraud, misrepresentation, employee's failure to perform his duties as defined herein, or other conduct or occurrences commonly considered to be cause, the Town shall have no obligation to pay the severance sum designated in this section. Termination for cause shall be effective immediately upon notice.

3.2 Contemporaneously with the delivery of the severance payment specified in paragraph 3.1, Attorney agrees to execute and deliver to Town a general and full release, releasing Town, its Town Council, individual council members, Town officers and employees of any and all claims that Attorney may have against Town, its Town Council, individual council members, Town officers and employees.

4. Compensation.

4.1 Effective at the start date of this contract, the Town agrees to pay the Attorney a base salary of \$180,000.00 per annum for his services, payable in installments at the same time as other employees of the Town are paid. The Town may increase said base salary of Attorney to such extent as the Town Council may determine it is desirable to do so on the basis of an annual salary review of Attorney, said review to occur as stated in Section 5 below regarding performance evaluations. The Town Attorney shall be entitled to receive increases in salary to the same degree as cost-of-living adjustments or market rate adjustments are provided across-the-board for all employees of the Town. In addition, the Town agrees to provide benefits to the Attorney in accordance with the Town's compensation and benefit plans as they now exist or hereafter may be amended, with the exception that the Attorney's annual vacation accrual shall be 180 hours per year.

4.2 The Town will pay a reasonable amount for such professional dues and subscriptions of the Attorney which are necessary and desirable for the benefit of the Town.

4.3 The Town shall pay a reasonable amount for travel and other job related expenses incurred by the Attorney in accordance with the Town's applicable policies.

4.4 Automobile Stipend. The Town shall pay Miller \$250 per month as an automobile stipend.

4.5 Deferred Compensation. In addition to Arizona State Retirement System contributions, the Town agrees to contribute into a qualified tax sheltered deferred compensation plan ("Plan") under the Internal Revenue Code designated by the Town and Miller an amount

equal to the lower of the maximum amount allowed by applicable law, regulation, Plan rules or: \$7,500.00 per year. The annual amount contributed shall be earned pro rata and paid in equal quarterly payments during the term of this Agreement. The Plan will conform to all applicable state and federal regulations, including but not limited to those issued by the Internal Revenue Service and the Internal Revenue Code. Miller shall be responsible for any state and federal tax consequences directly or indirectly related to the Town's contribution made pursuant to this Section. The parties hereto agree to execute any and all documents and instruments required to effectuate the provisions of this section, provided, however, nothing contained herein shall require the Town to pay more than the amount set forth herein.

5. Performance Evaluation. The Town Council shall review and evaluate the performance of the Attorney annually. Said review shall be in accordance with specific criteria developed jointly by the Town Council and the Attorney. Said criteria may be added to or deleted from as the Town Council may from time to time determine, in consultation with the Attorney.

6. Hours of Work. The Town Council recognizes that Miller is a salaried employee and must devote a great deal of time beyond the normal office hours to business of the Town and, to that end, Miller's work schedule will be allowed from time to time to deviate from normal office hours as appropriate.

7. Indemnification. In addition to that required under state and local law, the Town shall defend, save harmless, and indemnify Miller from and against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Miller's duties as prescribed by the Code or separate directions of the Town Council. The parties agree the Town's liability insurance currently in place or reasonably adjusted hereafter satisfies the Town's obligation in this regard.

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

If to the Town: Town of Paradise Valley  
6401 E. Lincoln Drive  
Paradise Valley, AZ 85253  
Attn: Mayor

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Robert D. Haws, Esq.

If to Miller: Andrew M. Miller  
6117 N. 14<sup>th</sup> Street  
Phoenix, AZ 85014

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. 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.

9. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or Miller of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

10. Attorneys' Fees. In the event either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party and, in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

11. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

12. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

13. Time of the Essence. Time is of the essence in this Agreement.

14. Assignment. This Agreement may not be assigned, in whole or in part.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

16. Amendment. No amendment or waiver of any provision in this Agreement will be binding (i) on the Town unless and until it has been approved by the Town Council and has become effective or (ii) on Miller unless and until it has been executed by Miller or his authorized representative.

17. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

18. Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona and venue for any legal action hereunder shall be in Maricopa County, Arizona.

19. Severability. Every provision of this Agreement is and will be construed to be a separate and independent covenant. If any provision in this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability. Each provision in this Agreement will be valid and will be enforced to the extent permitted by law and the parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

20. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained.

21. Conflict of Interest. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

**“Miller”**

**“Town”**

TOWN OF PARADISE VALLEY, an  
Arizona municipal corporation

\_\_\_\_\_  
Andrew M. Miller

\_\_\_\_\_  
Michael Collins, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk