



PROFESSIONAL SERVICES AGREEMENT

Gust Rosenfeld, P.L.C.

This Professional Services Agreement ("Agreement") is entered into and effective between the TOWN OF PARADISE VALLEY, an Arizona municipal corporation ("Town") and Gust Rosenfeld, P.L.C., an Arizona professional limited liability company ("Firm") (each individually "Party" and collectively "Parties") as of the ____ day of _____, 2021 ("Effective Date").

RECITALS

- A. The Town issued Request for Proposal, No.21-149-ATY dated October 23, 2020 ("RFP"), seeking outside counsel to serve as the Town Attorney, which RFP is incorporated herein by this reference.
- B. After issuing the RFP, the Town determined that the responsive and responsible proposer whose proposal is most advantageous to the Town was submitted by the Firm. The Firm's response to the RFP is incorporated herein by this reference.
- C. The Firm is willing to serve in the position as Town Attorney.
- D. The Town and Firm seek to memorialize their agreement as set forth in this document.

AGREEMENT

In consideration of the mutual promises, terms, covenants and conditions set forth herein, the Parties 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 herein.
2. **Appointment of Town Attorney.** The Town hereby retains the Firm to serve as Town Attorney for the Town of Paradise Valley.
 - 2.1. Andrew McGuire shall serve as the Town's primary contact and the attorney responsible for all general legal matters of the Town. Subject to McGuire's supervision, Trish Stuhan and Joseph D. Estes may provide additional or backup legal services, as required (McGuire, Stuhan, and Estes collectively referred to as "Attorneys" or "Key Personnel") and the Firm may use other attorneys in the Firm to work on Town matters.
 - 2.2. Prior to changing any Key Personnel, Firm shall obtain the written approval of the Town. All staffing decisions shall be discussed and agreed upon with the Town in advance.

3. Term.

- 3.1. The Initial Term of this Agreement shall be for one year, beginning on March 15, 2021, and continuing through and including March 14, 2022.
- 3.2. The Term of this Agreement may be extended for up to four additional years, one year at a time ("Renewal Term"), upon written agreement of the Parties. At least 90 days prior to the expiration of the Term, including any Renewal Term ("Renewal Period"), the Town shall provide written notice of its intent to extend the Term for an additional year. Any extension of the Term shall be upon mutual agreement of the Parties. Price adjustments will be reviewed only during the Renewal Period and will be a factor in the Town's renewal decision. There are no automatic renewals.

4. Scope of Services.

- 4.1. Firm shall perform the functions and duties of the Town Attorney as outlined in the RFP, all in accordance with the Arizona Rules of Professional Conduct for attorneys, applicable federal and state statutes, and lawfully enacted codes and ordinances of the Town. As Town Attorney, the Firm will provide advice to the Town Council, Town Manager, and upon direction of the Town Manager, to various departments of the Town, and will coordinate with the Town's In-House Attorney regarding the same. Areas in which legal advice may be required include, but are not limited to: open meeting and public records laws; elections; contract and procurement law, Town policies, procedures, codes, and ordinances; intergovernmental agreements; real estate purchases/sales and related contracts; zoning and land use; federal and constitutional issues; personnel and employment matters, federal and state grants; and Town Code violations.
- 4.2. Firm shall keep the Town fully and currently informed about the status of all matters, and shall provide periodic status reports to the Town Council and Town Management upon a mutually agreed upon schedule or as required to apprise of important occurrences.
- 4.3. As more fully described in the RFP, the Attorneys shall attend regular and special Town Council meetings, Planning Commission and other Boards and Commissions, administrative/staff meetings (e.g., Agenda Setting, Town Manager, Executive Leadership, Development Team), and other meetings as requested.
- 4.4. As more fully described in the RFP, the Attorneys shall, as health conditions allow, establish on-site (Town Hall premises) office hours of at least two half-days each week, or as otherwise agreed upon by the Parties. The Town agrees, however, to use best efforts to combine Attorney conferencing/meeting attendance and Attorney on-site hours. Attorneys agree to accommodate the Town in this effort by being available for longer durations during the week of Town Council meetings, responding promptly to email and telephone communications, and being available for telephonic/video conferences.
- 4.5. Upon request by the Town, the Firm may act as counsel to provide specialized legal services as described in Paragraph 5.2 below.
- 4.6. Firm shall devote the necessary time and attention to the obligations as specified in this Agreement. However, the Town recognizes that the Firm shall also engage in the private practice of law which includes representation of clients other than the Town. The Parties acknowledge that there will be situations where the Town may contract with other persons or firms to provide specialized legal services beyond the scope of the Firm's general legal services obligations under this Agreement. These situations may include but are not limited to (a) an insurance company's obligation to defend the Town pursuant to the terms of an insurance contract; and (b) the Town directly contracting with one or more attorneys for handling of specialized matters. The Firm may be required to provide information or otherwise provide general services under this Agreement that will assist in such matters.

5. Compensation.

- 5.1. The Town shall pay firm for general municipal counsel services, as generally set forth in the Scope of Services above, and as more fully described in the RFP, \$180,000.00 annually, to be paid in equal installments of \$15,000 per month, payable in arrears, not later than 30 days after the date of the

invoice from the Firm for the prior month's services. Such monthly amounts will be prorated for partial months.

5.1.1. Firm will track its time on Town matters and upon request provide reports for time worked such that the Town and Firm may compare the actual cost of services to the flat fee amount. The Firm will keep track of time based on the following hourly rates: \$220-\$350 for Partners; \$200 for Associates; and \$120 for Paralegals.

5.2. In the event special services are requested by the Town, as those services are defined in Firm's response to RFP, including, but not limited to, legal advice related to water, federal tax law, and environmental issues, the Town shall pay the Firm its discounted hourly rate set forth in the Firm's response to the RFP. Public finance matters will be billed according to the Municipal Finance Fees section of the Firm's response to the RFP.

5.3. In the event the Town wishes to retain the Firm for representation in litigation, except for routine condemnation cases, the Parties shall enter into a separate written agreement and the Town shall pay the Firm its discounted hourly rate set forth in the Firm's response to the RFP, unless the Parties mutually agree in writing to a different rate.

6. Expenses.

6.1. The Town shall reimburse the Firm for certain out-of-pocket expenses necessarily incurred in the performance of its duties under the provisions of this Agreement, without markup ("Reimbursable Expenses") or as otherwise agreed by the Parties. Reimbursable expenses include, but are not limited to, extraordinary postage, delivery charges by courier or overnight delivery services such as FedEx, and litigation-related expenses (e.g., investigative reports, expert witness fees, deposition charges, transcript costs, brief costs, court filing fees, process service fees, recording fees).

6.1.1. The Firm shall be reimbursed for approved expenditures where the expense is itemized in an invoice. Upon request, Firm will provide documentation supporting the invoiced amount. All expenses shall be billed at Firm's actual cost. Reimbursable expenses shall be paid by the Town within 30 days of receipt by the Town of the Firm's invoice for such expenses, unless the Parties agree otherwise. Unpaid invoices after 30 days shall bear interest at 1 ½% per month.

6.2. The Firm shall not seek reimbursement, and the Town is not obligated to pay, for any mileage expenses for travel within Maricopa County. Travel outside of Maricopa County on the Town's behalf will only be reimbursed if approved in advance by the Town Manager or her designee.

7. **Termination.** The Town may terminate this Agreement at any time, without cause, at any time upon written notice to the Firm, subject to the Firm's obligations under the Rules of Professional Conduct adopted by the Arizona Supreme Court (Rule 42) ("RPC") and the approval of the court if the Firm's representation of the Town in litigation is being terminated. The Firm may resign as the Town Attorney at any time upon at least 90 days' written notice to the Town and subject to the Firm's obligations under the RPC and approval of the court if a matter is in litigation.

8. **Conflict of Interest.** The Firm shall be free to dispose of such portion of the Firm's time, energy, and skill as are not required to be devoted to the Town in such a manner as the Firm sees fit and to such persons or entities the Firm deems advisable, but shall not engage in any representation of any nature, including legislative or administrative lobbying, which could be adverse to the Town at the same time the Firm is representing the Town pursuant to this Agreement. If such representation presents a conflict of interest under the Rules of Professional Conduct adopted by the Arizona Supreme Court (Rule 42), and if a waiver is permitted, a written waiver of such conflict must first be obtained from the Town prior to undertaking such representation.

9. **Town Files and Document Retention.** In addition to use of any Firm resources, Firm agrees to utilize Town's document management system to maintain Town files and to otherwise seasonally furnish Town electronic or hard copies of all significant documents, including those required to be maintained by the Town as permanent records, as may be requested or directed by the Town. At conclusion of representation, Firm agrees to retain any electronic or hard copy version of the Town's

file in its possession for a period of three years.

- 10. Confidentiality and Data Security.** All data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Firm in connect with this Agreement, is confidential proprietary information owned by the Town. Except as specifically provided in this Agreement, the Firm shall not disclose data generated in the performance of the service to any third person without the prior written consent of the Town Manager or designee. Personal identifying information, financial account information, or restricted Town information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. When personal identifying information, financial account information, or restricted Town information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed. In the event that data collected or obtained by the Firm in connection with this Agreement is believed to have been compromised, the Firm shall notify the Town Manager or designee immediately. The Firm agrees to reimburse the Town for any reasonable costs incurred by the Town to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach and providing any required remediation. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of this Section shall survive the termination of this Agreement.
- 11. Working Facilities.** The Firm shall provide services to the Town from the Firm's office and such other facilities normally suitable and adequate for the performance of the duties set forth in this Agreement. The Town will provide a private office for the Attorneys to use when working on-site for the Town.
- 12. Town Cooperation.** Recognizing that the Attorneys cannot effectively represent the Town without cooperation and assistance, the Town agrees to cooperate fully with the Attorneys and to promptly provide all information known or available to the Town relevant to the Attorneys' representation. This includes providing full and truthful information and documents requested in a timely fashion.
- 13. Benefit.** This Agreement shall inure to the benefit of and be binding upon the Firm and its successors and assigns. In the event any Attorneys should withdraw from or no longer be employed by the Firm or be unable to act during the Term hereof, the remaining member or members of the Firm shall perform all services required hereunder; and at Firm's option and with written notice to the Town, additional qualified personnel may at any time be added to the Firm to perform the Scope of Services.
- 14. Insurance and Indemnification Requirements.** For the duration of the Term of this Agreement, Firm shall procure and maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of all work pursuant to this Agreement. Such insurance shall cover Firm, its agent(s), representative(s), or employee(s).

 - 14.1. Minimum Scope and Limit of Insurance.** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The Town does not warrant that the minimum limits contained herein are sufficient to protect the Firm from liabilities that might arise out of the performance of the work under this Agreement, and the Firm is free to purchase additional insurance as many be determined to be necessary. Coverage must be at least as broad as:

 - 14.1.1. Commercial General Liability (CGL). Insurance with limits of no less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. 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 independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the Town and a separation of insurance provision.
 - 14.1.2. Automobile Liability. A business auto policy providing a liability limit of at least \$2,000,000 per accident and covering owned, non-owned and hired automobiles.

- 14.1.3. Worker's Compensation. The Firm must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Firm's employees engaged in the performance of work or services under this Agreement, and must also maintain Employers' Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit. Policy shall contain a waiver of subrogation against Town and Additional Insureds.
- 14.1.4. Professional Liability. Firm must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Firm, or anyone employed by Firm, or anyone for whose acts, mistakes, errors and omissions Firm is legally liability, with a liability insurance limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.

14.2. Other Insurance Provisions.

- 14.2.1. Endorsements. The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:
- 14.2.1.1. 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 tasks or work pursuant to this Agreement. Such liability may arise, but is not limited to, liability for work performed by Firm or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Firm.
- 14.2.1.2. For any claims related to this Project, the Firm'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 Firm's insurance and shall not contribute with it.
- 14.2.1.3. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the Town.
- 14.2.2. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A-, unless the Firm has obtained prior approval from the Town stating that a non-conforming insurer is acceptable to the Town.
- 14.2.3. Waiver of Subrogation. Firm hereby agrees to waive its rights of subrogation which any insurer may acquire from Firm by virtue of the payment of any loss. Firm 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 Firm, its employees, agent(s) and subcontractor(s).
- 14.2.4. Verification of Coverage. Within 15 days of the Effective Date of this Agreement or before work begins, whichever is earlier, Firm 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. 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 or any Renewal Term.
- 14.2.5. Firm's failure to Obtain. Firm's failure to obtain or submit required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Firm to comply with the terms and conditions of the Agreement.
- 14.2.6. Subcontractors. Firm shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

15. Indemnification.

- 15.1.** To the fullest extent permitted by law, Firm must defend, indemnify, and hold harmless Town and its elected officials, officers, employees volunteers 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 (including court costs, cost of claims processing, investigation) (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than Town or Firm) and caused or alleged to be caused, in whole or in part, from the breach of this Agreement by the Firm or the negligent acts or omissions, or willful misconduct, of the Firm of any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of the Firm to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Demands arising solely from the negligent acts or omissions, or willful misconduct, of the Indemnitee be indemnified by the Firm from and against any and all Demands or Expenses.

15.2. The Firm agrees that it will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Firm agrees to waive all rights of subrogation against the Town and its elected officials, officers, employees, volunteers and agents.

16. Arbitration of Fee Disputes. If a dispute arises between the Town and the Firm regarding fees, the Parties agree to resolve that dispute through the Arizona State Bar's Fee Arbitration Program. Either Party may initiate fee arbitration by contacting the State Bar's Fee Arbitration Coordinator.

17. Miscellaneous.

17.1. Independent Contractor Status. Nothing agreed upon hereunder, creates or shall be construed to create any nature or form of employment relationship between Firm and the Town. The Parties acknowledge, understand and agree that Firm shall be deemed an independent contractor with the Town, pursuant to this Agreement and for all purposes for which this Agreement is made. In that regard, the Town shall provide Firm with a form 1099 to verify and report all contract payments, hereunder, to Federal and State taxing authorities, as required by law. Firm understands that it is its sole responsibility to report all income earned pursuant to this Agreement, as required by law, and that it shall be solely responsible for all related taxes due to any and every taxing authority as and for social security, income, and every other applicable governmental tax.

17.2. Cancellation. Pursuant to the specific language and allowances of Ariz. Rev. Stat. § 38-511, the Town may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town is at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent 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.

17.3. Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between the Parties. With the execution of this Agreement, any further or additional representations, statements, promises, or understandings not contained herein shall be of no continued force, effect or validity. Any amendments, modifications or variation from the terms of this Agreement shall be in writing and shall be effective only after approval of the Parties.

17.4. Arizona Law; Venue. This Agreement must be governed and interpreted according to the laws of the State of Arizona and any legal proceeding, including but not limited to lawsuits, pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

17.5. Severability. The invalidity, in whole or in part, of any provision hereof, shall not affect the validity of any other provision, hereof, and this Agreement shall remain in full force and effect except as to such invalid provision.

17.6. Compliance with Immigration Laws and Regulations. Pursuant to the provisions of Ariz. Rev. Stat. § 41-4401, Firm warrants to the Town that Firm and all its agents are in compliance with all Federal Immigration laws and regulations that related to their employees and with the E-Verify Program

under Ariz. Rev. Stat. § 23-214(A). Firm acknowledges that a breach of this warranty by Firm or any of its agents is a material breach of the Agreement subject to penalties up to and including termination of the Agreement. The Town retains the legal right to inspect the papers of any employee of Firm or any agent who works on the Agreement to ensure compliance with this warranty.

- 17.7. Boycott of Israel. Pursuant to A.R.S. § 35-393, Firm certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a “boycott” of Israel, as such term is defined in the statute.
- 17.8. Waiver. The failure of the Town at any time to require performance of any provision of this Agreement shall in no way affect the right of the Town thereafter to enforce such provision. Nor shall the waiver of any succeeding breach of such provision act as a waiver of the provision itself.
- 17.9. Notices. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if hand-delivered, sent by certified or registered mail, or by overnight courier such as FedEx to the other party at the respective address listed below. Notice by email is not authorized:

Gust Rosenfeld, P.L.C.
One East Washington Street, Suite 1600
Phoenix, AZ 85004-2553
Attn: Andrew McGuire

Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253
Attn: Jill Keimach, Town Manager

With copy to:
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253
Attn: Jerry Bien-Willner, Mayor

- 17.10. 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 the termination of this Agreement.
- 17.11. 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.
- 17.12. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.
- 17.13. Force Majeure. Neither Party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.
- 17.14. 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.
- 17.15. 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.
- 17.16. Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

(SIGNATURES ON FOLLOWING PAGE)

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

GUST ROSENFELD, P.L.C.

TOWN OF PARADISE VALLEY,
an Arizona municipal corporation

By: _____
Its: _____

By: Jill Keimach
Its: Town Manager

ATTEST:

Duncan, Miller, Town Clerk (SEAL)

APPROVED AS TO FORM:

Deborah Robberson, Acting Town Attorney