

**SERVICES AGREEMENT
(Not Construction Related)**

This Services Agreement ("Agreement") is entered into and effective between the TOWN OF PARADISE VALLEY, an Arizona municipal corporation ("Town") and Corgan Associates, Inc., a Texas corporation authorized to do business in Arizona, ("Consultant") (individually "Party" and collectively "Parties") as of the _____ day of _____, 2016 ("Effective Date").

RECITALS

- A. Town desires to contract with Consultant to conduct a space needs study as set forth in Solicitation No. RFP-16-005-TMG (the "Project"), which is incorporated herein as if fully set forth;
- B. Town desires to retain the services of Consultant to perform certain specific duties and produce the specific work, all in accordance the Project and Consultant's Proposal for Space Needs Assessment, dated September 22, 2016 ("Proposal"), which is incorporated herein as if fully set forth and excerpts of which are attached as **Exhibit A**, Project Scope of Work ("Scope");
- C. Consultant desires to provide Town with services ("Services") consistent with professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances and the standards set forth in the Project, Consultant's Proposal, and this Agreement in order to complete the Project; 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 Subcontractors.**
Services. Consultant will provide all Services necessary to assure the Project is 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 contractors, retained by Town.
- 3. **Term.** The term of this Agreement commences upon the Effective Date and continues for a period of one (1) year, unless extended by mutual written contract amendment in one month increments up to a maximum of 12 months.
- 4. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Proposal, as more fully set forth in **Exhibit B**, the Project Timeline.
- 5. **Consultant's Work.**
 - 5.1 Standard. Consultant shall perform the Consultant's Services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform the Consultant's Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
 - 5.2 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.

5.3 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-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

5.4 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to Town exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" 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.
- 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, 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.

6. **Compensation for the Project.**

- 6.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$79,065 as specifically detailed in **Exhibit C** ("Compensation").
- 6.2 Changes in Scope of Project. The Compensation may be equitably adjusted if the contemplated Scope is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require Town Council approval.

- b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the Town Manager.
- c. In the event any conflict arises between the provisions of this Agreement and the provisions found in RFP-16-005-TMG and any of the Exhibits to this Agreement and accompanying attachments, the following shall be the order of precedence in resolving the conflict and governing the conduct of the Parties:
 - (1) This Agreement
 - (2) RFP-16-005-TMG, including addendums
 - (3) Consultant's Proposal.

7. **Billings and Payment.**

7.1 Applications.

- a. Consultant will submit monthly 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 calendar month ending on the last day of the month.

7.2 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.

7.3 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.

8. **Termination.**

8.1 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 and for reasonable costs incurred.
- 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.

8.2 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. 7.

- b. If Town's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to Town immediately upon demand; however, Consultant will not be subject to consequential damages in an amount to exceed the fee paid under this Agreement.

9. **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.

10. **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 as set forth in RFP-16-005-TMG and Consultant's Proposal. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors. The required insurance includes:

10.1 **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, including products and completed operations, with limits of no less than **\$1,000,000** 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. Products and completed operations insurance shall be in the amount of **\$2,000,000** per occurrence. Excess liability coverage of **\$1,000,000** is also required. 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.
- b. Automobile Liability: A business auto policy covering owned, non-owned and hired automobiles with a combined single limit per accident of **\$1,000,000**. If any hazardous material, as defined by any local, state or federal authority is the subject, or transported, in the performance of this contract, an MCS 90 endorsement is required providing **\$5,000,000** per occurrence limits of liability for bodily injury and property damage.
- c. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

10.2.1 **Indemnification For Claims That Arise From Non-Professional Services.**

- a. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Town, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Town, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

- 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.

10.2.2 **Indemnification For Claims That Arise From Professional Services.**

To the fullest extent permitted by law, Consultant agrees to indemnify and hold the Town, its officers, directors, shareholders and employees harmless from and against liabilities, damages and costs (including reasonable attorneys' fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Consultant or other persons employed or used by the Consultant in performance of professional services in accordance with the Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations. This indemnification expressly excludes the duty of Consultant to defend the Town, its officers, directors, shareholders and employees. However, the absence of the duty to defend shall not preclude Town, its officers, directors, shareholders and employees from seeking its reasonable attorneys' fees and litigation costs as part of its damages where and to the extent such fees and costs are caused by Consultant's negligence, recklessness or intentional wrongful conduct. Nothing in this section shall apply to indemnification for claims arising from non-professional services.

10.3 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the provisions required by RFP-16-005-TMG, including, but not limited to, the following:

- a. **The Town, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL, automobile policies, excess liability (follow form to underlying insurance) for any liability arising from or in connection with the performance of all 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.

10.4 **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.

10.5 **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 subcontractor(s).

- 10.6 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.

- 10.7 Subcontractors. Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 10.8 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.

11. **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.

12. **Notices.**

- 12.1 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).
 - 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.

12.2 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:

[REDACTED]
c/o

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

Kevin Burke
Town Manager
Town of Paradise Valley
6401 East 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 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 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.

13. Entire Agreement; Survival; Counterparts; Signatures.

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between Town and Consultant and supersedes all prior conversations and negotiations between the Parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the Parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as Exhibit A, if any, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

13.2 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.

13.3 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.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the Parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to Town Council approval.

13.5 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.

13.6 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.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

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

15. **Israel Boycott.** Consultant acknowledges this Agreement is subject to A.R.S. § 35-393.01, which prohibits the Town from contracting with any person who is currently, or during the Term or any renewal Term, participating in a boycott of Israel. Consultant warrants that it is not and will not participate in such prohibited activity in contravention of A.R.S. § 35-393.01, and has executed the affidavit attached as Exhibit E as assurance to 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 Work
Exhibit B	Schedule (Project Timeline)
Exhibit C	Compensation
Exhibit D	Dispute Resolution
Exhibit E	Affidavit of Israel Boycott

[SIGNATURES ON FOLLOWING PAGE.]

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

Town of Paradise Valley,
an Arizona municipal corporation

By: Kevin Burke
Its: Town Manager

ATTEST:

Duncan, Miller, Town Clerk (SEAL)

APPROVED AS TO FORM:

Andrew Miller, Town Attorney

Corgan Associates, Inc,
a Texas corporation

By:
Its:

EXHIBIT A
Services Agreement

SCOPE OF WORK

THE FOLLOWING IS A GENERAL STATEMENT OF THE SCOPE OF WORK. A MORE DETAILED STATEMENT OF WORK TASKS IS SET FORTH IN CONSULTANT'S PROPOSAL AND EXHIBIT C, THE PROJECT TIMELINE

The Town intends to undertake a project that seeks to accomplish three important tasks. First, a space needs assessment. Consultant will analyze the operations of Town Hall, both current and over the next 10-20 years, to understand the space required to conduct the same operations but at potentially larger scale and certainly with greater accumulation of records. Determining the necessary space per job class will be critical.

The second task is a space optimization analysis. The work product sought here is how to maximize the space that already exists. This includes not just work space, but backroom space (phone, electric, IT, etc.). The current utilization of the Town Hall has had a series of additions and remodels to address single-minded issues. The assessment will look at the entire building with the entire operation in mind and maximize the space identified in Task 1 of the project. This part of the assessment would also be where any structural changes such as lofts, wall changes, additions would be proposed.

Task three is a work flow analysis. The entrance and flow of work at Town Hall is quite clunky. It is not obvious where to go or who is available to help the customer coming into Town Hall. The Council Chamber is beautiful but awkward as it is surrounded by working offices and it blocks access to the main conference room facilities. The Community Room has become an important space for the organization, but its access and use can be less than optimal.

A detailed task list and schedule is attached.

Exclusions and Clarifications

- Construction Documents are excluded
- Any scope not specifically identified in the attached exhibits is excluded and shall, at Town's request, be provided as additional services, which require a written amendment to this Agreement.
- The number of meetings/workshops is limited to the number identified in attached schedule.

EXHIBIT B
Services Agreement

SCHEDULE

See attached Project Timeline

EXHIBIT C
Services Agreement

COMPENSATION

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$79,065.

DETAILED PROJECT COMPENSATION

Compensation for each Task shall be in accordance with the attached Price Sheet from Consultant's Proposal dated September 22, 2016. The not-to-exceed amount includes an allowance for Services of a consulting MEP engineer to assist in the analysis of relocation and consolidation of components for purposes of space planning and the related needs assessment report. Time spent for these services will be billed hourly, at a rate of \$150/hr and shall not exceed a total of \$6,000. The compensation lump sum fee is as follows:

Architecture / Corgan:	\$72,065
Reimbursable Expenses:	1,000
TOTAL BASE FEE	\$73,065
Allowance:	\$ 6,000
MEP Engineering Services (\$150/hr, up to 40 hours)	
TOTAL FEE WITH ALLOWANCE	\$79,065

EXHIBIT D
Services Agreement

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.

EXHIBIT E
Services Agreement

AFFIDAVIT OF ISRAEL BOYCOTT

See Attached Affidavit