

**AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
BONE HAUS BREWING LLC**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of March 5, 2019, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Bone Haus Brewing LLC, an Arizona limited liability company ("Bone Haus"), collectively referred to as the "Parties."

RECITALS

- A. WHEREAS, Bone Haus operates a brewery and tap room and has the ability to facilitate off-site beer service;
- B. WHEREAS, the Town will hold a permit for the sale of alcoholic beverages, namely beer, at the 2019 Fountain Hills Music Fest; and
- C. WHEREAS, the Parties desire to enter into this Agreement for the purposes of obtaining remuneration from the provision of services as set forth in this Agreement.

AGREEMENT

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

1. Purpose. The purpose of this Agreement is to articulate the rights and responsibilities of the Parties with respect to the sale and service of alcoholic beverages, namely beer, at the 2019 Fountain Hills Music Fest (the "Music Fest") to be held on April 6, 2019 and to establish compensation for Bone Haus's services.
2. Scope of Work. Bone Haus shall perform the following (the "Services"):
 - 2.1 Provide no fewer than 20 kegs of beer for sale at the Music Fest.
 - 2.2 Provide staffing to facilitate the service of alcoholic beverages for the duration of the Music Fest or as otherwise agreed by the Parties;
 - 2.3 Serve all alcoholic beverages for the duration of the Music Fest or as otherwise agreed by the Parties;

- 2.4 Implement and follow reasonable procedures to manage the service of alcoholic beverages consistent with all applicable laws and regulations;
- 2.5 Implement and follow reasonable procedures to accept and account for revenue obtained from alcohol sales;
- 2.6 Add the Town as an additional insured on an acceptable general liability insurance policy, in accordance with Section 7 below; and
- 2.7 Provide the Town with its portion of the revenue from alcohol sales in connection with the Music Fest, as set forth in Section 4 below.

3. Town Responsibilities. The Town shall be responsible to perform only the following:

- 3.1 Obtain and hold a County-issued alcohol permit for the sale of alcoholic beverages at the Music Fest;
- 3.2 Hire officers and event staff for age identification checks and monitoring of alcohol consumption; and
- 3.3 Provide fencing for or otherwise securing the alcohol sales and service area.

4. Compensation. All revenues from the sale of alcohol in excess of \$4,000.00, exclusive of merchandise sales, shall be divided between the parties as follows: 60% of revenues to the Town; 40% of revenues to Bone Haus.

5. Payments. Payment shall be made in a single installment by check made out to the Town of Fountain Hills. Payment shall be made within 30 calendar days following the conclusion of the Music Fest. Payment will be accompanied by an accounting of the proceeds.

6. Indemnification. To the fullest extent permitted by law, Bone Haus shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, breach of contract, in connection with the work or services of Bone Haus, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

7. Insurance.

7.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Bone Haus, Bone Haus shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Bone Haus. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Bone Haus from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Bone Haus's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Bone Haus. Bone Haus

shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Bone Haus shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Bone Haus shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Agreement and insurance requirements set forth herein protecting the Town and Bone Haus. Bone Haus shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Bone Haus will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Bone Haus's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Bone Haus's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Bone Haus's insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Bone Haus under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

7.2 Required Insurance Coverage.

A. Commercial General Liability. Bone Haus shall maintain "occurrence" form Commercial General Liability insurance 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, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Bone Haus shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Bone Haus's owned, hired and non-owned vehicles assigned to or used in the performance of Bone Haus's work or services under this Agreement. Coverage will be at least as broad as ISO

coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if Bone Haus engages in any professional services or work in any way related to performing the work under this Agreement, Bone Haus shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by Bone Haus, or anyone employed by Bone Haus, or anyone for whose negligent acts, mistakes, errors and omissions Bone Haus is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. Bone Haus shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Bone Haus's employees engaged in the performance of work or services under this Agreement and shall 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.

7.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the Town.

8. Miscellaneous.

8.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Bone Haus acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Bone Haus, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. Bone Haus is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Bone Haus do not intend to nor will they combine business operations under this Agreement.

8.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

8.3 Laws and Regulations. Bone Haus shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom Bone Haus is responsible abides by, and remains in compliance with, all rules,

regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards.

8.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and Bone Haus.

8.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

8.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

8.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

8.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Bone Haus without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by Bone Haus in violation of this provision shall be a breach of this Agreement by Bone Haus.

8.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release Bone Haus from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

8.10 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default

8.13 Israel. Bone Haus certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

8.14 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or Bone Haus to any other party of this Agreement with respect to the subject matter of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

CP
4/4/19

Grady E. Miller
Grady E. Miller, Town Manager

ATTEST:

Elizabeth A. Burke
Elizabeth A. Burke, Town Clerk

APPROVED AS TO FORM:

Aaron D. Arnson
Aaron D. Arnson, Town Attorney

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On April 9, 2019, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



Rhonda M. Brenneman
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Bone Haus"

BONE HAUS BREWING LLC
a(n) Arizona limited liability company

By: Andy Weiner

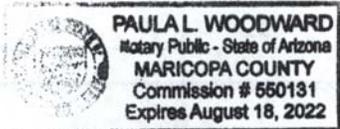
Name: Bone Haus Brewing

Title: Owner

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On March 4, 2019, before me personally appeared Andy Weiner, the Owner of BONE HAUS BREWING LLC, a(n) Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the limited liability company.



(Affix notary seal here)

Paula L. Woodward
Notary Public