

**SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
THE GARDEN GNOME, L.L.C.
D/B/A THE POND GNOME**

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "Second Amendment") is entered into as of April 16, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and The Garden Gnome LLC, an Arizona limited liability company, d/b/a The Pond Gnome (the "Contractor").

RECITALS

A. The Town and the Contractor entered into a Professional Services Agreement, dated February 23, 2017, as amended by that First Amendment, dated September 5, 2017 (collectively, the "Agreement"), for the Contractor to resurface the water park surface on the splash pad in Fountain Park (the "Services").

B. All capitalized terms not otherwise defined in this Second Amendment have the same meanings as contained in the Agreement.

C. The Town has determined that additional time for the Contractor to complete the Services is necessary.

D. The Town and the Contractor desire to enter into this Second Amendment to extend the term of the 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 the Contractor hereby agree as follows:

1. Term of the Agreement. Notwithstanding any provision to the contrary, the Agreement shall remain in full force and effect until December 31, 2018 unless terminated as otherwise provided pursuant to the terms and conditions of the Agreement.

2. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

3. Non-Default. By executing this Second Amendment, the Contractor affirmatively asserts that (i) the Town is not currently in default, nor has been in default at any time prior to this Third Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this Third Amendment are forever waived.

4. Israel. Contractor 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.

5. Conflict of Interest. This Second Amendment and the Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed and caused to be signed by their duly authorized representatives, this instrument on the date first written above.

"Town"

TOWN OF FOUNTAIN HILLS,
an Arizona Municipal Corporation

Grady E. Miller

Grady E. Miller, Town Manager

CR
5/2/18

ATTEST:

Bevelyn J. Bender

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On May 8, 2018, 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]

“Contractor”

THE GARDEN GNOME, LLC,
An Arizona limited liability company,
d/b/a The Pond Gnome

By: *Paul D. Holdeman*

Name: *Paul D. Holdeman*

Its: *member*

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On *4/30*, 2018, before me personally appeared *PAUL D. HOLDEMAN*, the *member* of The Garden Gnome, an Arizona limited liability company d/b/a The Pond Gnome, 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 Garden Gnome d/b/a The Pond Gnome.

[Signature]
Notary Public

(Affix notary seal here)

