

**FIRST 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 FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "First Amendment") is entered into as of September 5, 2017, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and The Garden Gnome, L.L.C., 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, for Contractor to resurface the water park surface on the splash pad in Fountain Park (the "Agreement"). All capitalized terms not otherwise defined in this First Amendment have the same meanings as contained in the Agreement.

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

C. The Town and the Contractor desire to enter into this First 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 Agreement. The term of the Agreement is hereby extended and shall remain in full force and effect until December 28, 2017, 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 First 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 First 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 First Amendment are forever waived.

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

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

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation



Grady E. Miller, Town Manager

CR
9/14/17

ATTEST:



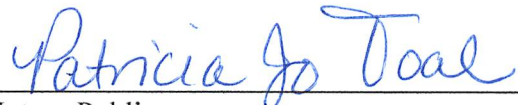
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On September 19, 2017, 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.





Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Contractor”

THE GARDEN GNOME, L.L.C.,
an Arizona limited liability company,
d/b/a THE POND GNOME

By: 

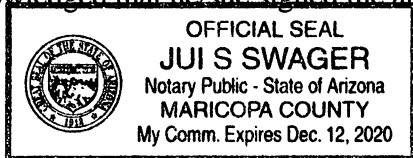
Name: Paul Holdeman

Title: member

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On 8th day of September, 2017, before me personally appeared Paul Dean Holdeman, the member of THE GARDEN GNOME, L.L.C., 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/she claims to be, and acknowledged that he/she signed the above document on behalf of the limited liability company.




Notary Public

(Affix notary seal here)