

When recorded return to:  
Richard Joel Stern, Esq.  
Apache Junction City Attorney  
300 East Superstition Blvd.  
Apache Junction, AZ 85119

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**FISCAL YEAR 2016 GRANT PASS THROUGH AGREEMENT BETWEEN THE CITY  
OF APACHE JUNCTION AND EAST VALLEY ADULT RESOURCES**

THIS GRANT PASS THROUGH AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_ 2016, by and between CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation ("City") and East Valley Adult Resources, a nonprofit agency ("EVAR"). City and EVAR are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

**RECITALS**

- A. EVAR is a nonprofit organization which provides social, recreational, fitness, advocacy, and transportation services at the Apache Junction Active Adult Center for Apache Junction residents.
- B. EVAR desires to utilize Local Transportation Assistance Fund II ("LTAFIG") funding for transportation services in Apache Junction.
- C. The Valley Metro Regional Public Transportation Authority ("RPTA") desires to convey to City a portion of its annual allocation required to be paid to local governments for the benefit of public transportation, pursuant to a court order filed in *Paisley v. Darwin*, U.S. Dist. Ct (Ariz.), No. CV-10-1253-PHX-DGC, 2011 WL 3875992, resuming distribution of multi-state lottery game proceeds to the Public Transportation Fund in Maricopa County, for disbursement by City to EVAR.
- D. City desires to disburse the aforementioned contribution to the EVAR and to set forth the mutual understandings between City and EVAR.
- E. There is a need for mutual cooperation for a pass through of grant funds from RPTA to City and ultimately to East Valley Adult Resources.
- F. Mutual cooperation would result in EVAR's obtaining assistance from City, which translates to public savings.

G. The Parties have mutual interests in this project and wish to enter into this Agreement with certain terms and conditions.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **ACCURACY OF THE RECITALS:** The Parties hereby confirm the accuracy of the Recitals set forth above, which are incorporated herein by this reference.

2. **CITY'S OBLIGATIONS:**

City agrees to do all of the following:

a. Disburse the aforementioned RPTA contribution to EVAR.

b. Review copies of all reports and documents sent to the RPTA by EVAR related to funded project.

3. **EVAR'S OBLIGATIONS:**

EVAR agrees to do all of the following:

a. Hold harmless the City of Apache Junction and its agents for any acts or omissions by City, its elected officials, appointees, and employees.

b. Provide to the City of Apache Junction a copy of all reports and documents sent to the RPTA related to funded project no later than 30 days after their submission to RPTA.

4. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the Parties with respect to the acceptance and distribution of the contribution to EVAR.

5. **Funding Schedule.** RPTA shall deliver a one-time payment of \$865.00 to the City for disbursement to EVAR for the provision of transportation services at the Apache Junction Active Adult Center ("Center"). The purpose of the contribution is to provide City residents with transportation to the Center, Center Programs, local medical appointments, and local shopping hubs.

6. **Term.** The Term of this Agreement is one calendar year from the execution date.

7. Indemnification and Hold Harmless. EVAR shall indemnify, defend and hold harmless the City, its Mayor and City Council, appointees, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, fees for attorneys, consultants and accountants or costs and expenses of any kind and nature, resulting from or arising out of the negligence or willful misconduct of City, its Mayor and City Council, appointees, employees and agents in performing the duties set forth in this Agreement.

8. Transactional Conflicts of Interest. The Parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

9. Waiver. No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the Party to be bound thereby.

10. Severability. City and RPTA each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11. No Third Party Beneficiary Rights. The Parties agree that no third party rights attach to this agreement.

12. Applicable Law and Venue: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to

enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

13. Indemnification: To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Consultant, its agents, employees, or any tier of Consultant's subcontractors in the performance of this Agreement. Consultant's duty to defend, hold harmless and indemnify City, its Special Districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious 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 an Consultant's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Consultant, any tier of Consultant's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Consultant may be legally liable.

14. Notices: Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by telecopy or telefacsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to City:	City of Apache Junction Attn: City Manager 300 E. Superstition Blvd. Apache Junction, Arizona 85119-2899 Telephone: (480) 474-5066 Facsimile: (480) 474-5110
If to EVAR:	East Valley Adult Resources Attn: Executive Director 45 West University Suite A - Mesa, Arizona 85201

Telephone: (480) 964-9014  
Facsimile: (480)898-7306

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

EAST VALLEY ADULT RESOURCES, an Arizona  
nonprofit organization

\_\_\_\_\_  
By:  
Its: President and CEO

CITY OF APACHE JUNCTION, ARIZONA, an  
Arizona municipal corporation

\_\_\_\_\_  
By: John S. Insalaco  
Its: Mayor

ATTEST:

By: \_\_\_\_\_  
Kathy Connelly, City Clerk

APPROVE AS TO FORM:

By: \_\_\_\_\_  
Richard J. Stern, City Attorney