

**AGREEMENT BETWEEN CITY OF APACHE JUNCTION AND
BOYS & GIRLS CLUB OF THE EAST VALLEY-
SUPERSTITION MOUNTAIN BRANCH FOR HEALTH AND HUMAN SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2017 by and between the CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation ("City"), and BOYS & GIRLS CLUB OF THE EAST VALLEY – SUPERSTITION MOUNTAIN BRANCH, a health and human services provider ("Services Provider"), for the City's human services program, collectively referred to as the "Parties" or individually as a "Party".

RECITALS

A. Pursuant to Apache Junction City Code, ("A.J.C.C.") Volume I, Article 2-11 Health and Human Services Commission, and Article 2-14 Requests for Financial Assistance, the City may provide financial assistance to non-profit agencies which provide human services and care for the elderly, handicapped, developmentally disabled and provide other public health needs.

B. The Health and Human Services Commission ("the Commission") has reviewed requests for city funding as submitted by health and human services providers for Fiscal Year 2017-2018.

C. The Commission has submitted its recommendations to the City Council.

D. On June 19, 2017, the City Council passed and adopted the 2017-2018 Fiscal Year budget, which included funding for health and human services for specific health and human services providers.

E. Pursuant to A.J.C.C. Article 2-14 Requests for Financial Assistance, Section (C)(1), all city funds allocated or granted to any non-profit agency shall be by means of a written contract based on services and/or a program (the "Program") to be provided to or work to be performed on behalf of the City and its residents in compliance with the provisions of state law relating to the use of public funds.

AGREEMENT

NOW, THEREFORE, in consideration of payment of public funds in exchange for health and human services to city residents, both Parties agree to the terms and conditions set forth below:

1. **SERVICES PROVIDER'S DUTIES:** Services Provider agrees to perform the following services in connection with the Program:

- A. Provide the Project Learn Program to City residents as a means of educational enhancement.
- B. Provide such programs and activities to only residents of the City and only as documented by Services Provider.
- C. Require documentation of City residency in the form of a valid State of Arizona driver's license or valid State of Arizona non-operator identification; current utility bill, showing an in-city address; current rent receipt showing an in-city address; State of Arizona valid voter registration or valid military identification which establish proof of residency within the City. Use or acceptance of any other form of identification, must be approved in advance by the Apache Junction City Clerk (hereafter the "City Clerk"). Type of documents accepted shall be included on all quarterly reports filed with the City Clerk as indicated in Section E below.
- D. Comply with all provisions of A.J.C.C. Article 2-14 Requests for Financial Assistance, attached hereto as Exhibit A, and all other applicable city ordinances; submit contract proposal for Fiscal Year 2018-19 to City on or before January 31, 2018.
- E. File with City all documentation for the previous quarter no later than ten (10) City working days following the end of the quarter. City offices are open Monday through Thursday 7:00 a.m. to 6:00 p.m. City offices are closed Fridays, weekends and legal holidays. City funded services to individuals shall be identified with complete city street addresses which shall be verified by comparing the addresses with the City street naming map as currently adopted or as may be amended or through the City geographic information system ("GIS") at <https://gis.ajcity.net/portal/home/>. Post office box addresses shall not meet the reporting requirements of this section. Advise City in its report of the identification utilized (driver's license, utility bill, etc.); submit to City typed or word processor quality reports; maintain a separate list of City residents assisted by the Program to include their name and address; designate one primary and one secondary person as coordinators for the record keeping and disbursement of funds; assign one primary and one secondary person who shall monitor compliance, review reports and verify City residency. Such persons shall be responsible for submitting accurate reports to the City Clerk; provide the City Clerk, in writing, with the names, addresses and telephone numbers of the primary and secondary contact persons immediately upon the signing of this agreement. Provide City Clerk

with written notification of any changes in the primary or secondary person(s) within five (5) City working days following such change. All reports shall be delivered in person or sent via first class mail. Reports sent by fax, email or other electronic means shall not be accepted. The City Clerk will prescribe the format in which such reports shall be prepared and submitted. Any reports not prepared in accordance with this section shall be deemed unacceptable and returned to Services Provider for revision. Any funds not disbursed by Services Provider shall be reimbursed to City. Any funds disbursed by Services Provider in violation of A.J.C.C. Article 2-14 Requests for Financial Assistance or this agreement shall be reimbursed to City.

- F. File the quarterly report and required documentation by the deadline set forth in Section E or risk disqualification for health and human services funding for Fiscal Year 2018-19. Any extensions or exceptions to the filing deadline must be granted by the City Clerk. Any such extensions or exceptions must be requested in writing and granted in writing prior to the filing deadline. The maximum allowable extension will be five (5) City working days. Failure to file the quarterly report and required documentation by the deadlines set forth in Section E above shall result in the immediate termination of this agreement.
- G. Maintain a listing with the Community Information and Referral Service that services Pinal County and the Apache Junction area during the Term of this agreement.
- H. Service Provider's failure to meet the requirements of A.J.C.C. Article 2-14 Requests for Financial Assistance or the terms of this agreement at any time shall result in the termination of this Agreement.
- I. Any service provider staff responsible for the preparation of the required reports or requests for reimbursement shall be familiar with the terms and requirements of this agreement in order to avoid processing errors.

2. COMPENSATION: In accordance with the terms and conditions of this Agreement, City shall compensate Services Provider for its services as follows:

- A. A total of \$30,000 for Fiscal Year 2017-2018 for services identified in Section 1, "Services Provider's Duties".

- B. Compensation shall be in equal quarterly payments of \$7,500.00 per quarter. No quarterly payment shall be released until Services Provider has provided all of the required documentation for the previous quarter and has provided satisfactory evidence of compliance with the terms and conditions as set forth in this agreement.
- C. Early release of Program funding may be requested on a quarter-to-quarter basis. Any such request shall be submitted in writing, on Services Provider's letterhead, and signed by both the local agency director and the president or vice president of the Services Provider's board of directors. Early release of funding shall be at the discretion of City and subject to Services Provider's compliance with the terms and conditions as set forth in this agreement.
- D. The purpose of this compensation is to provide start up monies and is not intended to provide annual funding to Services Provider for an indefinite period of time.
- E. In accordance with the recommendations of the Health and Human Services Commission and their subsequent acceptance by the Apache Junction City Council, should any of the agencies receiving Fiscal Year 2017-18 human services funding be unable to meet the requirements of A.J.C.C. Article 2-14 Requests for Financial Assistance or the terms of their respective agreement, any unused funds shall be redistributed proportionately among the remaining agencies or, at the discretion of the city manager, be retained in the City general fund.
- F. In accordance with the recommendations of the Health and Human Services Commission, representatives of the Services Provider shall attend a mandatory training meeting in order to review terms and reporting requirements of this agreement. The representatives shall be those individuals who are responsible for compiling the information and filing the required quarterly reports. The meeting date, time and location shall be determined by the City Clerk.

3. **TERM:** This Agreement shall retroactively be effective beginning July 1, 2017 through June 30, 2018, and shall remain in full force and effect for one fiscal year.

4. **SERVICES PROVIDER BILLING:** Services Provider shall bill City in the manner specified in Section 2 above.

5. **CITY'S STANDARD OF PERFORMANCE:** City shall furnish the Services Provider with all data, information and other supporting services as may be required.

6. **SERVICES PROVIDER'S STANDARD OF PERFORMANCE:** While performing the services, Services Provider shall exercise the reasonable professional care and skill customarily exercised by reputable members of Services Provider's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. Services Provider shall be responsible for all errors and omissions Services Provider commits in the performance of this Agreement.

7. **NOTICES:** All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City: Kathleen Connelly
City Clerk
City of Apache Junction
300 E. Superstition Boulevard
Apache Junction, AZ 85119

If to Services Provider: Boys & Girls Club of the East Valley
Apache Junction Branch
2602 W. Baseline, Suite 25
Mesa, AZ 85202

8. **TERMINATION:** This Agreement may be terminated by either party for any reason upon fifteen (15) calendar days written notice. If this Agreement is terminated, Services Providers shall be paid for services performed to the date of receipt of such termination notice. In the event of such termination, Services Provider shall deliver to City all work in any state of completion at the date of effective termination.

9. **SUBCONTRACTORS:** Services Provider shall, within ten (10) calendar days after the execution of this Agreement and before awarding any subcontract, furnish City with a list of proposed subcontractors, if any, and shall not employ any that City may object to for any reason. Services Provider agrees that it is as fully responsible to City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Services Provider. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and City.

10. **RECORDS:** Records of Services Provider's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Services Provider shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

11. **RIGHT OF CITY TO CONTRACT WITH OTHERS:** Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Services Provider.

12. **FORCE MAJEURE:** Neither City nor Services Provider, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subconsultants or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockage, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the Program. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subconsultants, vendors or investors desired by Services Provider in connection with the Program. Services Provider agrees that Services Provider alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

13. **INDEMNIFICATION:** To the fullest extent permitted by law, Services Provider 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 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 Program or services of Services Provider, its agents, employees, or any tier of the Services Provider's subcontractors in the performance of this Agreement. Services Provider'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 a Services Provider's acts, errors, mistakes, omissions, work Program or services in the performance of this Agreement including any employee of Services Provider, any tier of Services Provider's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Services Provider may be legally liable.

14. **WAIVER OF TERMS AND CONDITIONS:** The failure of City or Services Provider to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

15. **INDEPENDENT CONTRACTOR:** Services Provider shall at all times during Services Provider's performance of the services retain Services Provider's status as independent contractor. Services Provider's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Services Provider.

16. **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.

17. **OWNERSHIP OF RECORDS AND REPORTS:** All of the files, reports, documents, information and data prepared or assembled by Services Provider under this Agreement shall be and remain the property of City and shall be forwarded to City at any time City requires such papers.

18. **CITY LICENSE REQUIRED:** Services Provider represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Services Provider understands that the activity described herein constitutes “doing business in the City of Apache Junction” and Services Provider agrees to obtain an operating license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Services Provider also acknowledges that the tax provisions of the City of Apache Junction Tax Code may also apply and if so, shall obtain a privilege license. Any activity by subconsultants within the corporate city limits will invoke the same business operating and privilege license regulations on any subconsultants, and Services Provider ensures its subconsultants will obtain any required licenses. If there are taxable activities, a business or operating license shall be converted to a privilege license by the Services Provider and any subconsultants through the City Clerk’s Office.

19. **NONASSIGNMENT:** This Agreement has been entered into based upon the personal reputation, expertise and qualifications of Services Provider. Neither Party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Services Provider shall not assign any monies due to or become due to it hereunder without the prior written consent of City.

20. **ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Services Provider and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

21. **SEVERABILITY:** City and Services Provider 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.

22. **CONFLICTS OF INTEREST:** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

23. **POLITICAL ACTIVITIES:** As a community service-based organization, Services Provider is a non-political organization. Employees are prohibited from engaging in any partisan political activity with respect to candidates for political office beyond the private expression of personal opinion, registering as a member of a political party, signing nomination petitions and voting in any special, primary or general election. No board member, officer or employee of Services Provider shall solicit any contribution in cash or services from any Services Provider employee to support any candidate for public office. No board member or officer shall use the name of Services Provider, or use their affiliation with Services Provider, to engage in any partisan political activity of any kind or to solicit any contribution in cash or services to support any candidate for public office. If a board member or officer should engage in said activities, they shall make it clear that they are doing so in their personal and private capacity, and are not associated with Services Provider in any way, while engaging in said activity. The functions and activities of Services Provider are non-political with respect to candidates for political office. Therefore, all board members, officers and employees will refrain from engaging in any partisan political activity, of whatsoever type or nature, while attending or participating in Services Provider function or event. This includes the circulation or signing of nomination petitions or soliciting any contributions in cash or services from anyone to support any candidate for public office.

24. **COMPLIANCE WITH FEDERAL AND STATE LAWS:** Services Provider understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement. As required by A.R.S. § 41-4401, Services Provider hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Services Provider further warrants that after hiring an employee, Services Provider will verify the employment eligibility of the employee through the E-Verify program. If Services Provider uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Services Provider is

subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Services Provider shall not be deemed in material breach of this Agreement if the Services Provider and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Services Provider or subcontractor employee who works under this Agreement to ensure that the Services Provider or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

25. TIME OF ESSENCE. Time is of the essence of this Agreement and each provision hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representative as of the day and year first above written.

SERVICES PROVIDER:

EAST VALLEY BOYS & GIRLS CLUB -
SUPERSTITION MOUNTAIN BRANCH

By: _____
Title: Chairperson/President

By: _____
Title: Local Branch Director

CITY:

CITY OF APACHE JUNCTION,
an Arizona municipal corporation

Jeff Serdy
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney