

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF TEMPE
AND
THE EAST VALLEY REGIONAL VETERANS COURT PARTICIPATING MUNICIPALITIES**

This Intergovernmental Agreement ("Agreement") is made and entered into this ____ day of _____, 2018, by and between the Cities of Tempe, Chandler, Scottsdale, each individual Arizona municipal corporations ("Tempe", "Chandler" and "Scottsdale", respectively) and the Towns of Carefree, Fountain Hills, Gilbert, and Paradise Valley, each individual Arizona municipal corporations ("Carefree", "Fountain Hills", "Gilbert" and "Paradise Valley", respectively). Participating municipal courts will be referred to individually in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

A. The Parties are authorized and empowered to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") §§ 11-951 and 11-952 and their respective city charters or such other governing authority.

B. Pursuant to A.R.S. § 22-601, the presiding judge of the superior court in each county may establish a veterans court to adjudicate cases filed in a justice court or a municipal court in the county.

C. On April 15, 2016, the Presiding Judge of the Maricopa County Superior Court issued Administrative Order No. 2016-035, which established the East Valley Regional Veterans Treatment Court ("EVRVC") for the municipal courts in the East Valley of Maricopa County, including Tempe Municipal Court, Chandler Municipal Court, Gilbert Municipal Court and Scottsdale Municipal Court and other municipal courts as set forth in Administrative Order No. 2016-035, and provided that each municipal court would establish its own eligibility criteria for referral to the veterans court. On August 12, 2016, the Presiding Judge of the Maricopa County Superior Court issued Administrative Order No. 2016-071 adding the municipal courts of Fountain Hills and Carefree-Cave Creek to the EVRVC. On August 26, 2016, the Presiding Judge of the Maricopa County Superior Court issued Administrative Order No. 2016-075 adding the municipal court of Paradise Valley to the EVRVC. The Administrative Orders are attached hereto as Exhibit "A" and incorporated herein by reference.

D. Prior to the issuance of Administrative Order No. 2016-035, Tempe had operated its own veterans court. As of the effective date of this Agreement, pursuant to the direction of the Administrative Order, the presiding judges of the participating municipal courts of the EVRVC agreed to hold dockets at the Tempe Municipal Court, located at 140 East Fifth Street, Tempe, Arizona 85281.

E. Pursuant to A.R.S. § 22-602 and the Administrative Orders, any judicial officer qualified to hear cases in any of the participating municipal courts shall have the authority to adjudicate a case referred to the EVRVC.

F. Tempe employs judges pro tempore who are qualified to hear cases in Tempe Municipal Court ("Tempe Pro Tem Judges").

G. Tempe has received grant funding for, and has hired, a EVRVC coordinator ("Coordinator") to assist in the startup and operation of the EVRVC; is at 50% cost recovery for FY2018-2019 however that grant funding will reduce down to 25% in FY2019-2020.

H. The Parties desire to establish the terms and conditions by which Parties will work together on the EVRVC, including how Parties will proportionately share costs for the wages of designated court staff and operating costs based on the volume of cases referred to the EVRVC.

NOW, THEREFORE, in consideration of the covenants and promises contained in this agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1.0 Recitals. The foregoing recitals are incorporated into this Agreement.

2.0 Purpose. The Parties desire to work cooperatively on and share costs of the EVRVC, using Tempe's Municipal Court location, the full-time Coordinator, and Court Services Specialist to support the EVRVC an average of twenty (20) hours a week.

3.0 Additional Agencies.

3.1 The Presiding Judge of the Maricopa County Superior Court may issue future Administrative Orders authorizing additional municipals courts to participate in the EVRVC. Upon issuance of said Administrative Order, that court may be invited to and become a Party to this Agreement after approval by the majority of the then-existing Presiding Judges (or designee) from the then-existing Parties and compliance with the provisions of A.R.S. §§11-951 *et seq.* Such approval shall be documented by sending a letter of invitation to the Party wishing to join along with a copy to all existing members.

3.2 A public agency approved by the Presiding Judges (or designees) in accordance with Subsection 3.1, shall become a Party to this Agreement as of the date that the Agreement is adopted by its governing body and properly executed by it.

3.3 Each Party shall provide a copy of its fully executed Agreement to every other Party.

4.0 Term. The initial term of this Agreement shall be for a period of one (1) year, commencing on July 1, 2018, and ending on June 30, 2019 (the "Initial Term"), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to three (3) successive one-year terms (each, a "Renewal Term") upon mutual written agreement by the presiding judge of each Party, and filed with the Parties' City Clerks. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

5.0 General Operation of the EVRVC. The Parties acknowledge that:

- 5.1 Location of Court. The presiding judges of the participating municipal courts of the EVRVC have agreed to hold dockets of cases referred to the EVRVC at the Tempe Municipal Court.
- 5.2 Referral. Participating municipal courts may refer cases to the EVRVC for adjudication, as determined by their respective established eligibility criteria.
- 5.3 Scheduling. The Coordinator will coordinate with the Parties the days that each participating municipal court's referred cases will be adjudicated at the EVRVC.
- 5.4 Administration. Court administration for each participating court will establish its own case referral process, determine how its cases will be handled in the case management system, and establish how fines, fees, surcharges and any other costs will be allocated.
- 5.5 Jurisdiction. The originating court will retain jurisdiction of any case referred to the EVRVC.

6.0 Cost Sharing. Parties shall be charged a flat fee per case referred to the EVRVC from their jurisdiction. The flat fee is based on the average projected cost per case. The average costs per case is calculated by dividing the projected total costs by the projected volume as determined by the previous Fiscal Year's total cases. The flat fee will include the costs associated with the EVRVC Coordinator, a Court Services Specialist, and court operating expenses and will be offset by the applicable grant funding amount.

- 6.1 Reimbursement Payments. Tempe shall bill Parties quarterly for the preceding quarter. Payments are due to Tempe EVRVC within thirty (30) days of receipt of invoice. An audit will be completed at the end of the fiscal year to ensure accuracies of actual costs and actual cases will be compared to the projected costs and any difference will either be invoiced or credited to the appropriate Party.

7.0 EVRVC Staff. Tempe has employed the Coordinator and the Court Services Specialist to assist in the operation of the EVRVC. The Coordinator position has been partially grant funded since the establishment of the EVRVC in FY2016-2017 with decreasing funding each subsequent grant year through FY 2019-2020. Municipalities participating in the EVRVC program will share in the funding of costs not otherwise covered by a grant. The Parties acknowledge that the staff will be working under the jurisdiction and control of Tempe.

- 7.1 Duties. The Coordinator shall establish the priority of cases to be heard in the EVRVC, handle the scheduling of cases, coordinate with the clerks of each participating court, and coordinate with the U.S. Department of Veterans Affairs for the provision of treatment services to eligible veterans in the EVRVC. The Court Services Specialist shall perform administrative duties as assigned and necessary for the operation of the EVRVC.
- 7.2 Change in Employment. If the Coordinator will no longer be employed by Tempe and Tempe determines not to reassign the Coordinator's duties to another Tempe employee or contractor, Tempe shall provide Parties with as much notice as possible so the Parties can determine how such duties will be handled.

8.0 Court Costs. Tempe shall pay for any other costs incurred in operating the EVRVC, including without limitation, utilities in the Tempe Municipal Court, office supplies, and parking, but excluding any costs incurred by any Party in using Tempe's network connection, which costs are the responsibility of that Party.

9.0 Indemnification. To the fullest extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party and its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings, related to, arising from or out of, or resulting from any acts, errors, mistakes, omissions or negligent, reckless, or intentional actions caused in whole or in part by the other Party relating to work or services in the performance of this Agreement, including, but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of the Party's or its subcontractor's employees.

9.1 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

10.0 Insurance Coverage. Each Party will obtain such public liability insurance as is reasonably necessary to protect against claims, losses or judgments that might be occasioned by the negligent acts or omissions of the Party, their employees and agents, during the time that the respective Party is performing acts pursuant to this Agreement. The minimum amount of such coverage shall be in the amount of \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit, and any of the Parties may be self-insured. The Parties acknowledge that Chandler, Scottsdale and Tempe are self-insured as provided in A.R.S. § 11-981 and that this self-insurance fully complies with the requirements under this Section.

10.1 Workers' Compensation. Tempe staff, including the Coordinator, the Court Services Specialist and other Tempe employees assisting with the EVRVC shall be considered "employees" of Tempe and not of any other jurisdiction (no joint employer). Employees of other participating jurisdictions assisting with the EVRVC shall not be considered "employees" of Tempe. Accordingly, such employees of one Party shall not be entitled to employee benefits normally provided to bona fide employees of another Party. Nothing in this Agreement or its performance, except as provided in A.R.S. § 23-1022(D) and described below, shall be construed to result in any person being the officer, agent, employee, or servant of either Party when such person, absent this Agreement and the performance thereof, would not in law have such status. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022.

11.0 Termination; Cancellation.

11.1 Termination. Any Party shall have the right to terminate its participation in this Agreement, with or without cause, upon giving the other Parties not less than 30 days'

notice, in writing, of intent to terminate. Any such termination shall be signed by the Party' Contract Administrator, as applicable. Notice of intent to terminate shall be given as provided in Section 12.0 below. Following termination of participation by one or more Parties, this Agreement shall remain in full effect with respect to the remaining Parties; provided, however, if Tempe terminates this Agreement, the Agreement terminates as to all Parties.

11.2 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, any Party may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of any Party is, at any time while the Agreement is in effect, an employee of any other Party in any capacity, or a consultant to any other Party with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice is received by the other Parties to the Agreement, unless the notice specifies a later time.

11.3 Disposition of Property Upon Termination. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

12.0 Notices. Any notice required or permitted to be given pursuant to this Agreement, unless otherwise expressly provided herein, shall be given in writing, either personally to the authorized representatives of the other Parties, or by United States Postal Service certified mail, return receipt requested, as shown below or to such other street address(es) as may be designated by the respective Parties in writing from time to time. The notice shall be deemed complete when received by the person receiving it or, when certified mail is used, five days from the date of mailing, whichever occurs first. If a copy of the notice is also given to a Party's counsel or other recipient, the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

If to Carefree: Presiding Judge
Carefree-Cave Creek Consolidated Court
37622 N. Cave Creek Rd., Suite B
Cave Creek, AZ 85331

Town of Carefree
P.O. Box 740
Carefree, AZ 85377

If to Chandler: Presiding Judge
Chandler Municipal Court
200 E Chicago St
Chandler AZ 85225

City of Chandler
Mail Stop 602
P.O. Box 4008
Chandler, AZ 85244-4008
ATTN: City Attorney

If to Fountain Hills: Presiding Judge
Fountain Hills Municipal Court
16705 E Avenue of the Fountains
Fountain Hills, AZ 85268

Town Attorney
Town of Fountain Hills
16705 E Avenue of the Fountains
Fountain Hills, AZ 85268

If to Gilbert: Presiding Judge
Gilbert Municipal Court
55 East Civic Center Dr, STE 101
Gilbert, AZ 85296

Town Attorney
Town of Gilbert
50 East Civic Center Dr
Gilbert, AZ 85296

If to Paradise Valley: Presiding Judge
Paradise Valley Municipal Court
6517 East Lincoln Drive
Paradise Valley, AZ 85253

Town Attorney
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253

If to Scottsdale: Presiding Judge
Scottsdale City Court
3700 N. 75th Street
Scottsdale, AZ 85251

Copy to: City of Scottsdale
3939 North Drinkwater Boulevard
Scottsdale, AZ 85251
ATTN: City Attorney

If to Tempe: Presiding Judge
Tempe Municipal Court
140 East Fifth Street
Tempe AZ 85281

Copy to: City of Tempe
P. O. Box 5002
Tempe, AZ 85280
ATTN: City Attorney

13.0 Miscellaneous.

- 13.1 Invalid Provisions. In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained.
- 13.2 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.
- 13.3 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 hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court, sitting without jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
- 13.4 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement.
- 13.5 Entire Agreement. While separate reimbursement arrangements may exist between individual Parties, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the EVRVC.
- 13.6 Further Assurances. The Parties agree to do such further acts and things and to execute and deliver such additional Agreements and instruments as any Party may reasonably require to consummate, evidence, confirm or carry out the Agreement contained herein.
- 13.7 Contract Administrator. The Court Administrator for each participating court shall be the Contract Administrator unless the Presiding Judge designates otherwise. The Contract Administrator will be responsible for administering the terms of this Agreement for that Party, and will be the primary contact between the other Parties. The Contract Administrator shall be designated by the effective date of this Agreement and noticed in a separate writing between the parties. If no Contract Administrator is separately designated, the Presiding Judge for the jurisdiction will be considered the Contract Administrator.
- 13.8 Law Governing; 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.
- 13.9 Non-assignability. This Agreement is not assignable by any Party.
- 13.10 Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this

Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

- 13.11 Arizona Legal Workers Act. To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under A.R.S. § 23-214(A). A Party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and a non-breaching Party may terminate this Agreement. The Parties retain the legal right to inspect the papers of the other Parties to ensure that each Party is complying with the above-mentioned warranty under this Agreement.
- 13.12 Availability of Funds. This subsection will control despite any provision of this Agreement or any exhibit or other agreement or document related to this Agreement. The provisions of this Agreement for payment of funds or the incurring of expenses by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Each Party shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement and each Party shall keep the other Parties fully informed as to the availability of funds for this Agreement. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of such Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of such Party. If the governing body of any Party fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year as to such party and such Party shall be relieved of any subsequent obligation under this Agreement. The Agreement will remain in full effect for the remaining Parties to the Agreement; provided, however, if Tempe terminates this Agreement, the Agreement terminates as to all Parties.
- 13.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

[Signatures on following pages.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by signing their signatures, as of the date first written above.

TOWN OF PARADISE VALLEY, an Arizona
municipal corporation

ATTEST:

Michael Collins
Mayor

Duncan Miller
City Clerk

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges: 1) that he has reviewed the above Agreement on behalf of Paradise Valley; and, 2) that, as to Paradise Valley only, has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Andrew Miller
Town Attorney