

**AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
FOUNTAIN HILLS VETERAN’S MEMORIAL, INC.**

This Agreement (“Agreement”) is hereby made and entered into as of February 6, 2018, between the Town of Fountain Hills (“Town”) and Fountain Hills Veterans Memorial, Inc. (“Veterans Memorial”), collectively referred to as “the Parties.”

RECITALS

A. Whereas, Veterans Memorial is a registered 501(c)3 non-profit corporation with access to a pool of volunteers,

B. Whereas, the Town will hold a liquor license for the sale of alcoholic beverages, namely beer, at the 2018 St. Patrick’s Day Festival and a beer distributor will be donating alcoholic beverages, namely beer, to the Town to be sold; and

C. Whereas, the Town desires to enter into an Agreement with Veteran’s Memorial to perform the services described further in Section 2 below in exchange for remuneration as set forth in this Agreement to further Veterans Memorial’s charitable purposes;

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 Veteran’s Memorial hereby agree as follows:

1. Purpose. The purpose of this Agreement is to articulate the rights and responsibilities of the Parties with respect to the sale and service of alcoholic beverages, namely beer, at the 2018 St. Patrick’s Day Festival (“Festival”) to be held March 17, 2018, as well as fix compensation for Veterans Memorial’s services.

2. Scope of Work. Veterans Memorial shall do the following (the “Services”):

- 2.1 Provide volunteer staffing to facilitate the service of alcoholic beverages throughout the duration of the Festival or otherwise as agreed by the Parties;
- 2.2 Serve all alcoholic beverages through the duration of the Festival or otherwise as agreed by the Parties;
- 2.3 Implement and follow reasonable procedures to manage the service of alcoholic beverages consistent with all applicable laws and regulations

2.4 Meet all local, county, and state alcohol service regulations and comply with best practices for alcohol service

3. Town Responsibilities. The Town is solely responsible for accepting and accounting for all tickets in exchanged for beer at the event. Town staff are solely responsible for all cash handling and accounting of the beer sales. The Town shall hold the county alcohol permit.

4. Compensation. In exchange for providing the Services, Veteran's Memorial shall be paid 30% of all beer sale proceeds.

5. Payment. Payment will be made in a single installment by check within a reasonable time following the conclusion of the Festival. Payment will be accompanied by an accounting of the proceeds.

6. Indemnification. To the fullest extent permitted by law, Veteran's Memorial shall indemnify and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of Veteran's Memorial, its officers, employees, agents, or any tier of subcontractor in connection with Veteran's Memorial's work or services in the performance of this Agreement.

7. Miscellaneous.

7.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Veteran's Memorial acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Veteran's Memorial, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. Veteran's Memorial is not prohibited from entering into other contracts elsewhere. Town and Veteran's Memorial do not intend to nor will they combine business operations under this Agreement.

7.2 Applicable Law; 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 the Maricopa County, Arizona.

7.3 Laws and Regulations. Veteran's Memorial shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom Veteran's Memorial is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not

limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

7.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and Veteran's Memorial.

7.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

7.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

7.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

7.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Veteran's Memorial without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Veteran's Memorial shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Veteran's Memorial in violation of this provision shall be a breach of this Agreement by Veteran's Memorial.

7.9 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release Veteran's Memorial from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.



7.14 Israel. To the extent applicable, Veteran’s Memorial 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.

7.15 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

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

“Town”

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

Grady E. Miller  
Grady E. Miller, Town Manager

ATTEST:  
Nancy Walter (for)  
Beverly J. Bender, Town Clerk

Acting

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On 7<sup>th</sup> February, 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.



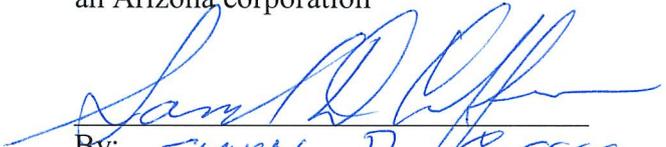
Patricia Jo Toal  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Veteran’s Memorial”

FOUNTAIN HILLS VETERAN’S MEMORIAL INC.,  
an Arizona corporation



By: SAMUEL D. COFFEE, PRESIDENT

Its:

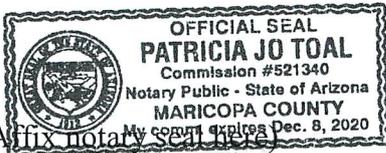
~~ATTEST:~~

~~Bevelyn J. Bender, Town Clerk~~

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On January 25, 2018, before me personally appeared Samuel D Coffee, the president of Fountain Hills Veteran’s Memorial Inc., an Arizona 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 Fountain Hills Veteran’s Memorial Inc.



Patricia Jo Toal  
Notary Public