

MEMORANDUM OF UNDERSTANDING

This Agreement is made and entered into this 1st day of July, 2018, by and between the City of Santa Fe, a New Mexico municipal corporation ("City") and the Santa Fe Veterans Alliance, a New Mexico non-profit corporation ("Alliance"), 7207 Avenida El Nido, Santa Fe, New Mexico 87507.

RECITALS

WHEREAS, the City has established and presently is operating the Veterans Advisory Board, ("VAB") for the benefit of veterans living in the Santa Fe area; and

WHEREAS, the governing body of the City recognizes that it is advisable and necessary to obtain the support and cooperation of groups organized to support efforts to benefit veterans in the Santa Fe area, such as the VAB; and

WHEREAS, Alliance is an organization, the members of which volunteer their time to support and promote veterans living in the Santa Fe area; and

WHEREAS, the City and Alliance wish to establish the terms under which they may mutually support the activities of each other.

NOW, THEREFORE, the City and Alliance agree to the following:

ARTICLE 1. UNDERTAKING OF ALLIANCE

- 1.1 Purpose.** Alliance is organized exclusively for charitable and educational purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code. Specifically the purpose of Alliance is for fundraising and contributing to the needs of Santa Fe veterans. Apart of this purpose is to increase the VAB's resources to local veterans and veteran agencies, to stimulate the use of the VAB's resources, and to encourage and support basic safety net service programs through the VAB. Said purposes are to be accomplished in cooperation with the City officials responsible for the VAB, and in a manner and for purposes consistent with the general policy directives established by such officials, including the Mayor and City Council and in immediate coordination with the Community Services Department Director (the "Director"), VAB Board Liaison (the "Liaison"), and the VAB Board Chair (the "Chair").
- 1.2 Promotion and Fund-raising.** Alliance will use its best efforts to promote and assist in the development of the VAB's activities, shall seek to develop broad, public, private and

volunteer support for the needs of Santa Fe area veterans and develop and implement a fundraising plan to support said needs.

- 1.3 Donations.** Donations to the VAB are to be considered as donations to the Alliance for tax-deductible purposes; however, it shall be the responsibility of any individual who donates to the Alliance or to the VAB for transfer to the Alliance, donations will be cash, credit/debit card, check, cashier's checks and money order only.
- 1.4 Deposit and Use of Funds.** Alliance agrees that the proceeds from the sale of materials and all other funds raised, including membership fees, less Alliance' operating expenses, are to be used solely to accomplish the specific purpose of Alliance as stated in Section 1.1 above in accordance with Alliance Articles of Incorporation and By-Laws. Alliance further agrees that all funds will be accounted for and regularly deposited in accounts designated for those purposes.
- 1.5 Funding of VAB Programs.** Whereas we fully understand that the Alliance has the ability to pay directly and independently for veteran's needs, the Alliance agrees to the extent it has funds available and as determined by its Board, to provide funding for various VAB programs. In the spring of each year, the City shall provide to Alliance a list of its funding needs, for Alliance consideration, for the upcoming fiscal year. Needs will be based on community data and a community wide needs assessment. The parties shall then meet to discuss the list and finalize the list of programs and expenses, which will be paid by Alliance.
- 1.6 Not-For-Profit status.** Alliance will organize itself and its activities so as to remain a New Mexico non-profit corporation in good standing, and so as to maintain its tax-exempt status under Section 501(c) (3) of the Internal Revenue Code, as amended or renumbered, or any similar successor statute.
- 1.7 Cooperation.** Alliance agree to work cooperatively with the VAB and its Liaison and/or Chair on all matters relating to the VAB and to recognize that Liaison and Director are employees of the City and that City process and procedure are required to be followed and Alliance agrees to comply with such processes and procedures so as to affect its purposes, *supra*. Such cooperation includes open and transparent dealings between the City and Alliance on all matters where Alliance are acting for the benefit of the VAB.

It is understood that no city appointed or employed agent will have voting rights but will act as an ex officio member.

ARTICLE 2. UNDERTAKINGS OF THE CITY

- 2.1 Advice to Alliance.** The VAB Chair, Liaison, and/or Director may periodically provide to the Alliance suggested fund-raising priorities and objectives based on a community

wide needs assessment and available data which would be presented to the Alliance. All suggestions will be strongly considered by the Alliance Board, but the final decision will rest with the Alliance Board. Coordination will happen at the Alliance Board's regularly scheduled meetings.

- 2.2 Assistance by Staff and VAB Members.** In consideration for the services and funding provided by Alliance pursuant to this Agreement and upon approval of the Director, the City agrees to permit and encourage the staff liaison of the VAB and VAB Members to assist Alliance with its fund raising activities to the extent such activities are provided for the benefit of the VAB, are City or City-sponsored programs, or complement or support the responsibilities of the VAB. Alliance understands that any such assistance may be withdrawn at any time at the discretion of the Director.
- 2.3 Promotion of Alliance.** When Materials are available, the City shall provide same to Alliance in consideration for the services, marketing, and publishing provided by Alliance pursuant to this Agreement. City will make an active effort to promote activities, events and accomplishments of the Alliance.
- 2.4 Material Procurement.** City will assist with procurement of materials for example, brochures, loaning of chairs and tables, for Alliance events at no cost or low cost to the Alliance, if available.
- 2.5 Funding.** When available the City will provide fund matching through the VAB fund to that of the Alliance, when VAB funding is available.
- 2.6 City Representative.** The Director and Liaison will administer this Agreement on behalf of the City.

ARTICLE 3. TERM, TERMINATION AND RENEWAL.

- 3.1 Term.** This Agreement shall commence on July 1st, 2018 upon final execution by the parties and continue for a period of three (3) years thereafter from July 1st, 2018, unless sooner terminated as provided herein.
- 3.2 Renewal.** This Agreement may be renewed by mutual written agreement of the parties for such period or periods of time as may be agreed upon. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and upon any successors and assigns.
- 3.3 Termination for Convenience.** This Agreement may be terminated by either party for convenience and without cause effective upon written notice to the other party at least sixty (60) days in advance.

3.4 Termination for Cause. If either the City or Alliance breach any material term of this Agreement, the other party may cause the Agreement to be terminated by giving written notice of the termination to the other party. The notice will state the effective date of termination, which will be no sooner than thirty (30) days after written notice is given pursuant to Section 5.19 herein.

3.4.1 The action(s) of an individual member of the Alliance or City or VAB shall not constitute a material breach of this Agreement unless the Board fails to take reasonable action to remedy the situation upon learning of such action(s).

3.5 On Termination.

3.5.2 Accounts. If this Agreement is terminated and Alliance is dissolved and liquidated, all accounts of Alliance shall be transferred, subject to all requirements of the Nonprofit Corporation Act, to a successor organization(s), mutually approved by the Alliance Board and the City on or before the date of termination. In such event, the successor organization shall honor, to the maximum extent possible, the instructions of contributors and donors to Alliance. If the parties cannot agree to a successor organization, the parties shall, to the extent not inconsistent with the Nonprofit Corporation Act, submit to binding arbitration in Santa Fe, New Mexico under the New Mexico Arbitration Act. If the Agreement is terminated and Alliance continues to exist as an organization, Alliance will continue to support the purposes listed in Section 1.1. This provision shall survive the termination of this Agreement.

ARTICLE 4. MISCELLANEOUS

4.1 Non-profit Corporation. Alliance agrees to continue its organizational status and activities so as to maintain its status as a New Mexico non-profit corporation in good standing and a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

4.2 Articles and Bylaws. The City and VAB has reviewed Alliance' Bylaws and found them acceptable. Upon any change to the Bylaws, Alliance will furnish a copy of the revised Bylaws to the City.

4.3 Independent Status. Alliance agrees that it is acting in a separate legal capacity and not as an agent of the City.

4.4 Approval Required. This Agreement shall not become effective or binding until approved by the City's Manager.

4.5 Liability. Each party shall be solely responsible for fiscal or other sanctions occasioned as a

result of its own violation of requirements applicable to the performance of the Agreement. Each party shall be liable for its actions in accordance with this Agreement.

- 4.6 NEW MEXICO TORT CLAIMS ACT.** Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.
- 4.7 Third Party Beneficiaries.** By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Alliance. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.
- 4.8 Assignment.** Neither the City nor the Alliance shall assign or transfer any interest in this MOU or assign any claims for money due or to become due under this MOU without the prior written approval of the other party.
- 4.9 Amendment.** This Memorandum of Understanding shall not be altered, changed, or amended except by instrument in writing.

IN WITNESS WHEREOF, the City and Alliance have executed this Agreement as of the date first above written.

CITY OF SANTA FE:

Approved By:



City Manager

Date: 6/29/18

Attest:


Yolanda Y. Vigil, City Clerk 

SANTA FE VETERANS ALLIANCE:

By: 

Title: CHAIR

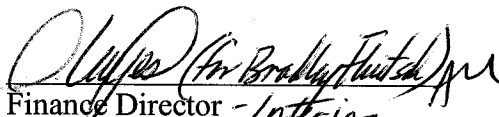
Date: 7/18/18

Approved as to Form:


City Attorney

6/15

Approved:


Finance Director - Interim