

**AGREEMENT BETWEEN
THE MARICOPA ECONOMIC DEVELOPMENT ALLIANCE
AND THE CITY OF MARICOPA**

THIS AGREEMENT (“Agreement”) is made and entered into this 6th day of September 2016, by and between The City of Maricopa, Arizona, an Arizona municipal corporation (“City”), and the Maricopa Economic Development Alliance (“MEDA”) an Arizona non-profit corporation (“Recipient”).

WHEREAS, A.R.S. §9-500.11 authorizes cities and towns to spend public monies for and in connection with economic development activities that the governing body of the city or town has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the city or town; and

WHEREAS, the Recipient is a local non-profit corporation in good standing with the State of Arizona; and

WHEREAS, the Recipient is committed to support the City’s goal to become a top location choice for new investment in Arizona by (i) supporting educational achievement, (ii) encouraging the formation, attraction, growth and retention of business, and (iii) increasing the resident population, which, working together, strengthen the economic vitality of the City; and

WHEREAS, the City has a need for assistance in the areas of economic development competitiveness, community engagement, community marketing and strategic planning; and

WHEREAS, City desires to award public monies to Recipient for provision of economic development services in these areas; and

WHEREAS, Recipient is qualified and prepared to perform the necessary services in connection with these efforts.

NOW, THEREFORE, City agrees to award funds and does hereby award funds to Recipient and Recipient agrees to provide the Services required according to the terms and conditions and for the consideration hereinafter set forth:

1. AWARD FUNDS:

The City agrees to award a total sum of not more than \$119,500 to the Recipient as follows:

a.) During Fiscal Year 2016-2017, the City shall appropriate to Recipient up to \$44,500.00 annually (“Award Fund”). The Award Fund shall be remitted to Recipient on a quarterly basis as a match to private dollars raised by Recipient for operations. At the end of each quarter (September 30, December 31, March 31 and June 30, or earlier should match funds be raised), Recipient shall submit to City a detail of the private funds raised during such quarter designated for MEDA operations signed and attested to by an officer of the Recipient (“Funding Request”). The City shall, within thirty (30) days of its receipt of the Funding Request, remit to the Recipient an amount equal to the Funding Request for such quarter up to the outstanding

balance available in the Award Fund. Once the Award Fund has been fully paid to Recipient, the City shall have no further funding obligation under this Agreement and the Recipient will have no further obligation to report on its private fund raising efforts. The Recipient may withhold the name of any private donor that expressly requests that their donation remain confidential. In the event this Agreement is terminated prior to its full term as provided for herein, such appropriations shall be immediately discontinued.

b.) During Fiscal Year 2016-2017, the City shall appropriate to Recipient up to \$75,000.00 annually ("Marketing Award Fund"). The Marketing Award Fund shall be remitted to Recipient on a quarterly basis as a Three to One (3:1) match to private dollars raised by Recipient for marketing efforts. At the end of each quarter (September 30, December 31, March 31 and June 30, or earlier should match funds be raised), Recipient shall submit to City a detail of the private funds raised during such quarter designated for marketing purposes signed and attested to by an officer of the Recipient ("Marketing Funding Request"). The City shall, within thirty (30) days of its receipt of the Marketing Funding Request, remit to the Recipient an amount three times the Marketing Funding Request for such quarter up to the outstanding balance available in the Marketing Award Fund. Once the Marketing Award Fund has been fully paid to Recipient, the City shall have no further funding obligation under this Agreement and the Recipient will have no further obligation to report on its private fund raising efforts. The Recipient may withhold the name of any private donor that expressly requests that their donation remain confidential. In the event this Agreement is terminated prior to its full term as provided for herein, such appropriations shall be immediately discontinued.

c.) The Recipient agrees to raise from the private sector, foundations and other non-City sources a total sum of not less than \$69,500 to meet the requirements set forth in subsection (a) and (b) above. If Recipient raises excess funds for either operations or marketing, the City agrees that such excess funds can be applied to satisfy the requirements to obtain any remaining City appropriation for either operations or marketing. In no event shall the City appropriate more than \$119,500 to Recipient.

2. RECIPIENT'S DUTIES: Funding is subject to Recipient conforming to the conditions and performing the duties and responsibilities provided herein:

a.) Recipient agrees expenditures of Award Fund and Marketing Award Fund will only be for the purpose(s) stated in the Scope of Services ("Services") which is attached hereto as Exhibit A and Exhibit B, respectively and incorporated herein by reference. If the Recipient's expenditures deviate from the approved Services, the Recipient shall immediately reimburse the unauthorized expenditure amount to the City and the Agreement may be subject to cancellation pursuant to the procedure set forth below.

b.) Recipient agrees that it will immediately contact the City Manager to make application to the City Council for a revision of the Services to completely expend the Award Fund, the Marketing Award Fund or to allow the City to reallocate the funds elsewhere.

c.) Recipient must have prior written approval from the City Council for changes in the intent and purpose of the Services.

d.) Recipient agrees to allow City to make site visits as well as financial and

function audits, which City may deem necessary to ensure Agreement compliance.

e.) Recipient agrees to retain all Award Fund and Marketing Award Fund records and supporting documentation for a period of five (5) years after Agreement termination and to make all records including budget expenditures available for inspection and audit by City upon written notice.

f.) Recipient agrees to submit a quarterly written report within thirty (30) days of quarter-end (September 30, December 31, March 31 and June 30), indicating the activities, successes and major transactions that have occurred due to these Award Fund and Marketing Award Fund and in accordance with the Scope of Services as described in Exhibit A and Exhibit B.

g.) Recipient agrees that any expenses incurred by Recipient for approved Services which exceed the Award Fund provided pursuant to this Agreement shall be the sole responsibility of the Recipient unless otherwise specified in writing by the City.

3. CITY'S DUTIES: City shall arrange for access to and make all provisions necessary for Recipient to enter upon public and private property as required for Recipient to perform the Services hereunder.

4. TERM OF AGREEMENT: This Agreement shall terminate on June 30, 2017. This Agreement may be terminated by either party upon thirty (30) days written notice. Recipient may suspend its Services should an Award Fund and Marketing Award Fund remain delinquent for thirty (30) days from its Due Date.

5. TERMINATION FOR FAILURE TO APPROPRIATE FUNDS. The parties acknowledge that this Agreement is subject to annual budget appropriations and failure by the City to appropriate funds to implement the terms of this Agreement shall immediately terminate this Agreement.

6. RECIPIENT'S STANDARD OF PERFORMANCE: While performing the Services, Recipient shall exercise the reasonable care and skill customarily exercised by reputable members of Recipient's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its skill and expertise. Recipient shall be responsible for all errors and omissions Recipient commits in the performance of this Agreement that are a breach of this standard.

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: City of Maricopa Attn: City Manager 39700 West Civic Center
Plaza, Maricopa, AZ 85138

If to Recipient: Maricopa Economic Development Alliance, 20987 North John Wayne
Parkway, Suite B-104, PMB 384, Maricopa, AZ 85138

8. NO THIRD PARTY BENEFICIARIES: The Services to be performed by Recipient are intended solely for the benefit of the City. Nothing contained herein shall confer any rights upon or create any duties on the part of Recipient toward any person or persons not a party to this Agreement.

9. UNCONTROLLABLE FORCES: City and Recipient shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

10. INDEMNIFICATION: To the extent allowed by law, Recipient shall indemnify and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of, or is in any way connected with the negligent performance of Services under this Agreement by Recipient, or any of Recipient's employees, agents or consultants, and from all claims by Recipient's employees, consultants and agents for compensation for services rendered to Recipient in the performance of this Agreement, notwithstanding that City may have benefitted from their services. This indemnification provision shall apply to any and all negligent acts or omissions, willful misconduct, whether active or passive, on the part of Recipient or Recipient's employees, consultants or agents. This section shall survive the expiration or early termination of the Agreement.

11. WAIVER OF TERMS AND CONDITIONS: The failure of City or Recipient 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.

12. INDEPENDENT CONTRACTOR: Recipient shall at all times during Recipient's performance of the services retain Recipient's status as independent contractor. Recipient's employees shall under no circumstances be considered or held out 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 Recipient.

13. ARBITRATION. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Recipient and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Recipient shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Recipient. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

14. GOVERNING 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.

15. ADDITIONAL ACTS AND DOCUMENTS: Each party to this Agreement agrees to do all things, take all actions and to make, execute and deliver such other documents and instruments as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.

16. LICENSE: Recipient represents and warrants that any license necessary to perform the Services under this Agreement is current and valid. Recipient understands that the activity described herein constitutes "doing business in the City of Maricopa" and, if applicable, Recipient agrees to obtain a business tax license pursuant to Article 8-1 of the City of Maricopa's City Code and keep such license current during the term of this Agreement. Any activity by sub-consultants within the corporate city limits, will invoke the same business tax regulations on any sub-consultants, and Recipient ensures its sub-consultants will obtain any required business tax license.

17. NONASSIGNMENT: Recipient agrees it will not transfer or assign any obligations, duties, rights or benefits under this Agreement to any person or entity without express written permission of the City. Permission of the City may be withheld with or without cause.

18. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Recipient and supersedes 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 Services, 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.

19. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

20. CONFLICTS OF INTEREST: The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

21. AMERICANS WITH DISABILITIES ACT: This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 1210112213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The Recipient shall comply with Executive Order 99-4, which mandates that all

persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The Recipient shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

22. UNDOCUMENTED WORKERS: Subject to existing law, and regulations, illegal or undocumented aliens will not be employed by the Recipient for any work or services to be performed pursuant to this Agreement. The Recipient will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this Agreement. Recipient agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2)) (the “INA employment provisions”), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented aliens. Under the terms of this Agreement, the Recipient shall not knowingly hire or employ for any work or services performed pursuant to this Agreement any workers or employees not lawfully authorized to work under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach of this Agreement.

23. NO KICK-BACK CERTIFICATION: MEDA warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in MEDA. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid MEDA hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this 6th day of September, 2016.

CITY OF Maricopa

Maricopa Economic Development Alliance
an Arizona nonprofit corporation

By: _____
Christian Price, Mayor

By: _____
William Stacy
Chairman

ATTEST:

Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney

Exhibit A

Award Funds Scope of Services Maricopa Economic Development Alliance (MEDA)

MEDA is a public purpose, nonprofit charitable organization whose charter is to improve economic and employment opportunities in the City of Maricopa.

The Scope of Services encompasses a significant ramp-up of MEDA activities in the area of board engagement and participation; organizational development; Maricopa's economic and community competitiveness and improving K-12 education in Maricopa.

Goals:

- 1. Continue to strengthen MEDA through the development and active engagement of its Board members and key stakeholder groups in the Maricopa community by fostering collaboration and cooperation to focus on shared values and goals.**
 - a. Continue to cultivate and expand the MEDA private sector fundraising base.
 - b. Continue to strengthen and engage Board members in MEDA's program initiatives.
 - c. Ensure compliance and financial stability and health.

- 2. Strengthen and improve Maricopa's economic and community competitiveness.**
 - a. Shovel Ready Sites – TBD with input from the Economic Development Director.
 - b. Support and champion issues that will help strengthen Maricopa's competitive position in the State of Arizona, Pinal County and Greater Phoenix market.

- 3. Continue to foster partnerships to create the best K-12 system in America.**
 - a. Continue to work through the MEDA K-12 Education Task Force, which is comprised of education officials, MEDA Board members, and City of Maricopa officials.
 - b. Work with the Task Force and other education stakeholders to improve the awareness of and appreciation for Maricopa's public school system.
 - c. Assist the MUSD and MUSD Governing Board with the development and execution of an outreach effort to residential realtors in Maricopa and the East Valley to ensure that they are better educated about the progress and quality of the MUSD K-12 schools.

Exhibit B

Marketing Award Funds Scope of Services Maricopa Economic Development Alliance (MEDA)

MEDA is a public purpose, nonprofit charitable organization whose charter is to improve economic and employment opportunities in the City of Maricopa.

The Scope of Services encompasses MEDA engaging with a marketing firm to develop and implement a marketing and communications program to promote the community, internally and externally as a place in which to live, do business and invest.

1: Gather Perspective, Gain Propulsion

- a. One workshop-style session with Maricopa elected officials, City staff and members of the business community
- b. Two telephone interviews with business decision-makers who have chosen a Maricopa site in the past 24 months
- c. Two telephone interviews with business decision-makers who have considered Maricopa but selected a site elsewhere in the past 24 months
- d. Two tenant representative commercial real estate broker telephone interviews

2: Galvanize Positioning and Key Messaging

- a. Overall brand strategy brief
- b. Overarching goals of the marketing/positioning program
- c. Overall positioning statement
- d. Key audiences
- e. Key messages by audience

3: Game Plan

Rather than a series of individual “one-off” ideas, the emphasis here is on orchestrating the ideas—regardless of marketing discipline—so that they work in unison. This game plan contents will be presented in a written report and PPT summary, and will include:

- a. Background
- b. Research recap
- c. Key considerations
- d. Positioning
- e. Purpose statement/objectives
- f. Strategies
- g. Tactics
- h. Measurement

4: Go – Implementation

Regular interface/communication with the MEDA and the City, keeping them apprised of key dates, key action items, material needs, etc.

Jobs could include an array of different marketing communications vehicles and programs:

- a. Public, media and community relations initiatives
- b. Traditional media buying and placement services
- c. Development of creative materials for a variety of formats
- d. Special event planning and execution
- e. Online marketing (including banner, pay-per-click and website SEO)
- f. Social media outreach
- g. Email marketing
- h. Multilayered promotional campaigns
- i. Collateral design

5: Gauge – Evaluation/Refinement

This work entails the ongoing assessment and refinements that may be required once the implementation stage