

**City of Maricopa Contract for Professional Services  
Between the City and F.O.R. Maricopa**

This Agreement dated this 21<sup>st</sup> day of August, 2012, between the CITY OF MARICOPA, an Arizona Municipal Corporation (“City”) and F.O.R. Maricopa., an Arizona Non-Profit Corporation (“Contractor”).

**WHEREAS**, the City is a municipal corporation operating under the provisions of Title 9 of the Arizona Revised Statutes; and

**WHEREAS**, the CONTRACTOR desires to provide services for a food bank program through a contract with the City of Maricopa; and

**WHEREAS**, the City believes that a food bank program for its citizens would be in the best interest of the City.

**NOW, THEREFORE, IT IS AGREED BETWEEN BOTH PARTIES AS FOLLOWS:**

1. SERVICES: CONTRACTOR shall provide services for a food bank program to the City of Maricopa.

2. DURATION OF CONTRACT: The term of this contract shall commence on September 1, 2012 and expire on June 30, 2013.

3. COMPENSATION AND MANNER OF PAYMENT: In consideration for said Food Bank Program Services rendered under this contract, the City shall pay Fifty Thousand and 00/100 Dollars (\$ 50,000) for Food Bank Program Services to the CONTRACTOR in the following manner: monies shall be disbursed in two (2) equal payments on September 1, 2012 and February 1, 2013 upon receipt and approval of the prior quarter’s written funding and progress report (Exhibit A) from CONTRACTOR. Each progress report shall be submitted no later than Fifteen (15) days following the completion of each respective quarterly period. CONTRACTOR shall submit quarterly reports to the City stating and detailing the Food Bank Program Services provided by the CONTRACTOR during the preceding quarter. Payments shall be made in accordance with the City of Maricopa’s Purchasing Policy.

4. REPORTS AND ACCOUNTING: CONTRACTOR shall maintain records and accounts in accordance with generally accepted accounting principles for all revenues received and expenditures made under this contract. CONTRACTOR shall provide the City with a written and complete budget outlining all planned revenue sources and expenditures. Required written quarterly funding and progress reports shall detail the Food Bank Program Services and participation numbers in those services provided by CONTRACTOR as detailed in the grant proposal. Together with each quarterly report, CONTRACTOR shall provide accounting of the use of the amounts paid under this contract. CONTRACTOR shall also provide an end of contract report comprehensively outlining CONTRACTOR’s actual revenues and expenses by general

category. In addition, CONTRACTOR agrees to make its records and accounts available for inspection during reasonable business hours upon written request for inspection by the City. CONTRACTOR shall provide the City Manager with notice of the meetings of the CONTRACTOR's Board of Directors at least two (2) weeks prior to their scheduled occurrence. CONTRACTOR 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.

5. RESTRICTION UPON USE OF FUNDS: Any and all amounts paid under this Agreement may be used solely to provide Food Bank Program Services. CONTRACTOR agrees to refund the City any amounts used for any other purpose. Any amount used for a purpose other than those provided for under this Agreement shall constitute a lien in favor of the City against amounts remaining to be paid under this Agreement and may be deducted therefrom by the City at its sole option without prejudice to any other available remedies.

6. TERMINATION: This Agreement shall automatically terminate under expiration of the term specified in Paragraph 2 hereof. This Agreement may also be terminated by the City upon breach by CONTRACTOR of paragraphs 4, 5, 15 and 16. Paragraph 3 shall survive termination of this Agreement only to the extent that amounts remain payable under this Agreement to CONTRACTOR for services provided by CONTRACTOR prior to termination of this Agreement. This Agreement may be terminated by either party upon thirty (30) days written notice.

7. RELATIONSHIP OF THE PARTIES: CONTRACTOR shall at all times during the term of this Agreement retain CONTRACTOR's status as 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. CONTRACTOR'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 CONTRACTOR.

8. DEFENSE & INDEMNIFICATION: CONTRACTOR shall defend, 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 this Agreement, or any of CONTRACTOR's employees, agents or subconsultants, and from all claims by CONTRACTOR's employees, subconsultants and agents for compensation for services rendered to CONTRACTOR in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR or CONTRACTOR's employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement.

9. INSURANCE: CONTRACTOR will maintain at least Two Million Dollars (\$2,000,000.00) worth of insurance coverage, either as separate policy or as part of a “blanket policy,” making City a co-insured on the Policy. CONTRACTOR will provide City with documentation of liability insurance coverage, and will inform City immediately of a cancellation or decrease in coverage. CONTRACTOR agrees that it will maintain liability insurance coverage for its personnel, land, buildings, equipment and physical assets while its facilities are used for a food bank program.

10. NOTICES: All notices to the other party required under this contract 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  
City Manager  
P.O. Box 610  
Maricopa, AZ 85139

If to CONTRACTOR:

F.O.R. Maricopa  
Attn: Wendy Webb  
PO Box 82  
Maricopa, AZ 85139

11. 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. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The Contractor 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 Contractor 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.)

12. FORCE MAJEURE: City and CONTRACTOR 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.

13. ENTIRE CONTRACT: This Agreement and any attachments represent the entire agreement between City and CONTRACTOR 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 agreement, 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.

14. 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR. 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.

15. 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.

16. CONFLICT OF INTEREST: This Agreement is subject to the provisions of A.R.S. § 38-511.

17. NO THIRD PARTY BENEFICIARIES: Only the Parties may enforce this Agreement. The Parties do not intend through this Agreement to confer enforceable rights on any non-party and do not intend to create any third party beneficiaries to this Agreement.

18. TERMINATION FOR NON-APPROPRIATION: This Agreement shall terminate at the end of the then current fiscal period for non-appropriation of funds if

City's governing body fails to appropriate funds to pay for the obligations required of it by this Agreement. Such cancellation shall be upon ninety (90) days written notice to the CONTRACTOR. The City's fiscal period ends June 30 of each year. Funding under this Agreement beyond the current appropriation year is conditional upon the appropriation by the Maricopa City Council of sufficient funds to pay for this Agreement. Should such appropriation not be approved, this Agreement shall terminate at the close of the current appropriation year.

19. WAIVER OF TERMS AND CONDITIONS: The failure of City or CONTRACTOR 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.

20. NONASSIGNMENT: Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. CONTRACTOR shall not assign any monies due or to become due to it hereunder without the prior written consent of City.

21. 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.

22. UNDOCUMENTED WORKERS: CONTRACTOR understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, CONTRACTOR hereby warrants to the City that CONTRACTOR and each of its subcontractors ("Subcontractor") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject CONTRACTOR to penalties up to and including termination of this Agreement at the sole discretion of the City. The City retains the legal right to inspect the papers of any CONTRACTOR employee who works on this agreement to ensure that CONTRACTOR is complying with the Immigration Warranty. CONTRACTOR agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of CONTRACTOR and any of subcontractors to ensure compliance with Immigration Warranty. CONTRACTOR agrees to assist the City in regard to any random verifications performed.

CONTRACTOR shall not be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this paragraph must be included in any contract CONTRACTOR enters into with any and all of its subcontractors who provide services under this agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

23. SCRUTINIZED BUSINESS OPERATIONS: In signing this Agreement, CONTRACTOR certifies pursuant to ARS §35-391 that they do not have scrutinized business operations in the Sudan and pursuant to ARS §35-393 that they do not have scrutinized business operations in Iran.

24. NO KICK-BACK CERTIFICATION: CONTRACTOR warrants that no person has been employed or retained to solicit or secure the 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 the CONTRACTOR. For breach or violation of this warranty, the City shall have the right to annul the Agreement without liability, or at its discretion to deduct from the compensation to be paid CONTRACTOR hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

**IN WITNESS WHEREOF**, the parties have executed this agreement on the day and year written above.

CITY OF MARICOPA

\_\_\_\_\_  
Christian Price, Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

CONTRACTOR

By: \_\_\_\_\_

**EXHIBIT A**  
**REPORTING REQUIREMENTS**

**Quarterly Reports are required** – City quarters are defined; August –October, report due 11/15, Nov-Jan, report due 2/15, Feb-April, report due 5/15, and May-July, final report due 8/15

## **A. Narrative**

### *1. Results/Outcomes*

- Describe the progress made towards the stated goals and objectives related to the grant and the project timeline. (Please include the stated goals and objectives in your response)
- Please detail any and all problem areas encountered during the month with the solutions identified to solve the problems.
- Please describe any electronic and printed media activities. (Please provide a copy)

## **B. Financials**

Please provide income and expenditure information compared to the approved budget for your program or project. If there are any major variances, please explain.

Please retain a copy of all invoices for expenditures for a period of two (2) years after termination of project and make records available for examination or audit by City personnel during regular business hours.

## **Council Presentation**

Each awarding agency is required to provide a brief presentation (not exceeding 5 minutes) to City Council either in January or February on the status of your project, successes and barriers.

## **Final Grant Report Format (Due no later than 30 days at the end of the contract)**

### *1. Results/Outcomes*

- Describe the progress made towards the stated goals and objectives related to the grant and the project timeline. (Please include the stated goals and objectives in your response)
- What difference has this program or project made in the Maricopa community or for the population you are serving? Please describe evidence of effect (e.g., numbers served, demographic information, client satisfaction surveys, survey results, pre-post test results, community indicators, outcomes etc.)
- Were there any unanticipated results, either negative or positive, that you have not already described above? If yes please describe the implication.

## **B. Financials**

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Please retain a copy of all invoices for expenditures for a period of two (2) years after termination of project and make records available for examination or audit by City personnel during regular business hours.