

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") made this 17th day of July, 2018, by and between **The City of Maricopa**, an Arizona municipal corporation (hereinafter "City") and **Nexus Consulting LLC**, a Virginia Limited Liability Company, 115 Elm Street, SW, Vienna, Virginia 22180 (hereinafter "Consultant") .

RECITALS

City desires to engage the services and expertise of Consultant and Consultant desires to accept such engagement, all of the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

1. Engagement and Duties of Consultant. City hereby engages Consultant and Consultant hereby accepts such engagement as an independent contractor to perform the duties set forth in this Agreement. During Consultant's engagement by City, Consultant shall render advice, recommendations and advocacy on behalf of the City as City may reasonably request with respect to lobbying in support of federal issues included in the Council approved Legislative Platform, to include, but not limited to, transportation and the Santa Cruz Wash, and Arizona State issues in support of completion of projects originating at the federal level. In addition, Consultant shall provide the City Manager a written quarterly update of progress and when requested, a one-time, follow-up presentation before Council on the status of activities and issues consistent with the tasks outlined in this Agreement.
2. Extent of Duties. Consultant shall devote such of Consultant's business time, attention and efforts as are reasonably necessary to the performance of Consultant's duties under this Agreement. Consultant shall solely determine how much time and attention Consultant shall devote to the business conducted by City and Consultant shall not be restricted in any manner from engaging in or performing any services, either direct or indirect, and whether full-time or part-time or on a consulting or advisory basis, for any other business in connection with any matter in respect of which the interest of such organization is not adverse to or in conflict with or inconsistent with that of City.
3. Conflicts of Interest. Prior to acceptance of any new federal client, Consultant will notify the City Manager and discuss the issues. In the event there is a perceived conflict, Consultant will continue to represent the interests of the City regarding the potential conflict area and not an opposing interest. Nonetheless, this Agreement is subject to the cancellation provisions in A.R.S. Section 38-511.
4. Compensation.
 - (a) During the term of this Agreement, City shall pay to Consultant an amount not to exceed Ninety Six Thousand and 00/100 Dollars (\$96,000.00) as compensation for any and all services and for the reimbursement of the payment of out-of-pocket expenses incurred relative to Consultant's duties, including travel and business entertainment expenses, accommodations, long distance telephone calls, special mailing and delivery expenses, and other such similar expenses incurred by Consultant under this Agreement.

(b) Invoice; Interest on Unpaid Balance. Consultant shall render a monthly invoice on a time and expense basis setting forth (i) the hourly fees for the month, (ii) the nature and amount of any costs to be reimbursed, and (iii) the balance due. City shall pay the balance due in full upon presentation. If City fails to pay the balance due in full within thirty (30) days following presentation, City's account shall be deemed delinquent, and City shall be charged a late payment fee of one and one-half percent (1-1/2%) of the balance then due. The late payment fee permits Consultant to be compensated for receiving a late payment and is not intended to create a credit arrangement. Consultant reserves the right to suspend performance of services if City's account is delinquent.

5. Term of Engagement. The term of Consultant's engagement hereunder shall commence on July 1, 2018, and shall continue until June 30, 2019 or until terminated by either party upon thirty (30) days prior written notice as set forth in Section 9 below, subject to cancellation under A.R.S. Section 38-511.

6. Independent Contractor. Consultant's relationship to City, during the term of this Agreement, shall be deemed to be that of an independent contractor and, except where expressly provided by this Agreement Consultant shall not be entitled to benefits normally associated with an employment relationship.

7. Entire Understanding. This Agreement embodies the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings, inducements and conditions, express or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing.

8. Binding Nature of Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns, except no party may assign or transfer such party's rights or obligations under this Agreement without the prior written consent of the other party.

9. Notices. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered against receipt or when deposited in the United States mails, first class, postage pre-paid, addressed at the address set forth on the signature page hereto. Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

10. Controlling Law and Venue. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed 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 provision 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.

11. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

12. Attorneys' Fees. In the event it becomes necessary for either City or Consultant to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in any such action and proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including, without limitation, reasonable attorneys' fees.

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 rule of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Consultant and the City. In the event the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Consultant 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 Consultant. 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. Undocumented Workers. Consultant understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. Section 41-4401, Consultant hereby warrants to the City that the Consultant and each of its Subcontractors (hereinafter "Subcontractor") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and relations that relate to their employees and A.R.S. Section 23-214(A) (hereinafter "Immigration Warranty"). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Consultant 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 Consultant or Subcontractor employee who works on this Agreement to ensure that the Consultant or Subcontractor is complying with the Immigration Warranty. Consultant 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 the Consultant and any Subcontractors to ensure compliance with the Immigration Warranty. Consultant agrees to assist the City in regard to any random verifications performed. Neither the Consultant nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed in Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. Section 23-214, Subsection A. The provisions of this paragraph must be included in any contract the Consultant enters into with any 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 consultant or subcontractor.

15. No Kick-Back Certification. Consultant 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 the Consultant's firm. 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 Consultant hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

16. INSURANCE:

16.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of the Consultant, the Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. The Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the Consultant. The Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in

these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The Consultant shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Consultant shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and the Consultant. The Consultant shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the Consultant shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be the Consultant's responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials, and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) The Contractor's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

16.2 Required Insurance Coverage.

a. Professional Liability (Errors and Omissions Liability). Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of

the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

b. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor 's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

16.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first written above.

CITY

City of Maricopa
an Arizona Municipal Corporation
39700 W Civic Center Plaza
Maricopa, Arizona 85138

BY: _____

Title: _____

Date: _____

CONSULTANT

Nexus Consulting, LLC
a Virginia Limited Liability Company
115 Elm Street, SW
Vienna, Virginia 22180

BY: _____

Title: _____

Date: _____