

**Memorandum of Understanding
Between and Among
The City of Maricopa
And
Maricopa Economic Development Alliance**

This Memorandum of Understanding (“MOU”) is entered into on September 4, 2018 (“Effective Date”) between and among **The City of Maricopa**, located at 39700 West Civic Center Plaza, Maricopa, Arizona 85138 (“City”), and **Maricopa Economic Development Alliance, an Arizona non-profit corporation** (“MEDA”) (hereinafter referred to collectively as “Parties” or individual as “Party”) regarding a collaborative relationship to host the State of the City event to be held on October 24, 2018.

1. **Responsibilities of MEDA.**

- a. Collect sponsorships for the State of the City event. Such sponsorships shall be available as set forth in Exhibit A, which is attached hereto and incorporated herein by reference. All sponsorships will be available on a first come, first serve basis.
- b. Hold any proceeds MEDA collects over the necessary amount in an account for next year’s State of the City events.
- c. Support and cooperate with the City to develop and distribute marketing and promotional materials. All marketing and promotional materials must be approved by the City prior to their use and distribution.

2. **Responsibilities of the City.**

- a. Make the Council Chambers and foyer available for the State of the City.
- b. Create the program for the State of the City including, but not limited to, the schedule and content of the event.
- c. Create and distribute invitations for the State of the City.
- d. Develop and distribute marketing and promotional materials for the State of the City.
- e. The City will provide any funding necessary for the State of the City that is needed in addition to the sponsorships obtained by MEDA, to cover direct expenses.

3. **Duration and Termination.**

- a. The term of this MOU shall be for a period of one (1) year commencing on the Effective Date. At the end of the year, the MOU shall be automatically renewed for additional one year terms upon the same terms and conditions as set forth herein, unless terminated as provided herein.

- b. Any Party may terminate its participation in this this MOU by providing at least thirty (30) days written notice to the other Party. In the event this MOU is terminated, all funds held by MEDA for the next State of the City event shall be immediately paid to the City.

4. **Reports and Accounting.** MEDA shall maintain records and accounts in accordance with generally accepted accounting principal for all funds received for State of the City events. MEDA shall provide an annual report to the City detailing all funds collected for and spent on the State of the City and the balance remaining for future events, if any. The report shall be provided to the City no later than thirty (30) days after each State of the City event. MEDA agrees to make its records and accounts available for inspection during reasonable business hours upon written request for inspection by the City. MEDA's reasonable cost of financial reporting per GAAP not to exceed \$300 will be paid out of the funds it is holding under the MOU, or if there are no such funds, by the requesting party. MEDA shall maintain records for a period of at least two (2) years after termination of this MOU, 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.** MEDA shall use the funding from the sponsorships only for the upcoming and future State of the City events, including MEDA's reasonable cost of financial reporting per GAAP not to exceed \$300 will be paid out of the funds it is holding under the MOU, or if there are no such funds, by the requesting party. MEDA shall not use the funding for any other purpose unless agreed upon in writing by both parties in advance. MEDA shall refund the City for any and all funds used for any unauthorized purpose no later than fifteen (15) days following the unauthorized use of funds. In the event MEDA does not expend the entire amount of the funding provided by the sponsors before the expiration or termination of this MOU, MEDA shall provide the City with the entire balance of unspent funds no later than fifteen (15) days following the expiration or termination of this MOU, whichever occurs first.

6. **Indemnification.** Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party, its officers, officials, agents, employees, or volunteers (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claim") arising out of bodily injury to any person (including death) or property damage, but only to the extent that such claims are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

7. **Relationship.** The Parties, nor any personnel of any Party, will for any purpose be considered employees or agents of the other Parties. Each Party assumes full responsibility for the actions of its personnel, and is solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits.

8. **No Third Party Beneficiaries.** There are no third party beneficiaries of this MOU.

9. **Conflict of Interest.** The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this MOU.

10. **Assignment.** Neither party may assign any of its rights nor delegate any of its duties under this MOU without the prior written consent of the other party which may be withheld for any reason or for no reason.

11. **Entire Contract.** This MOU represents the entire agreement between the City and MEDA 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 MOU shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the MOU, 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.

12. **Arbitration.** The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim of controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, 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 MEDA 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 MEDA 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 MEDA. 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.

13. **Governing Law and Venue.** The terms and conditions of this MOU 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 MOU, 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 MOU or to recover any damages for and on account of the breach of any term or condition in this MOU, 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.

14. **Wavier of Terms and Conditions.** The failure of the City or MEDA to insist in any one or more instances on performance of any of the terms or conditions of this MOU 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.

15. **Severability.** If any part, term or provision of this MOU shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

16. **Americans With Disabilities Act.** This MOU 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: MEDA 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. MEDA 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.)

17. **Undocumented Workers.** MEDA 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, MEDA hereby warrants to the City that MEDA and each of its subcontractors (“Subcontractor”), if any, 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 MOU and shall subject MEDA to penalties up to and including termination of this MOU at the sole discretion of the City. The City retains the legal right to inspect the papers of MEDA or Subcontractor employee who works on this MOU to ensure that MEDA or Subcontractor is complying with the Immigration Warranty. MEDA 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 MEDA and any of subcontractors to ensure compliance with Immigration Warranty. MEDA agrees to assist the City in regard to any random verification(s) performed.

Neither MEDA 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 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 MEDA enters into with any and all of its subcontractors who provide services under this MOU or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

18. **No Kick-Back Certification.** MEDA warrants that no person has been employed or retained to solicit or secure the MOU 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 the MOU without liability, or at its discretion to deduct from the compensation to be paid to MEDA hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

Maricopa Economic Development Alliance

By: _____
Its: _____

The City of Maricopa

Christian Price, Mayor

ATTEST:

APPROVED AS TO FORM:

Vanessa Bueras
City Clerk

Denis Fitzgibbons
City Attorney