

PUBLIC SERVICE AWARD AGREEMENT

THIS PUBLIC SERVICE AWARD AGREEMENT (“Agreement”) is made and entered into this 1st day of May, 2012, by and between the City of Maricopa, Arizona, an Arizona municipal corporation (“City”), and Maricopa Rotary Club (“Recipient”).

WHEREAS, on September 20, 2011, City approved funding, once Recipient was able to match the funds, to be used for beautification of the Rotary Park which will be available to the citizens of Maricopa;

WHEREAS, Recipient is now able to match the funds to be used for beautification of Rotary Park (the “Project”); and

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

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:** City will pay Recipient Ten Thousand and 00/100 Dollars (\$10,000.00) within ten (10) days from the execution of this Agreement (“Award Fund”), which amount shall be matched by Recipient for the Project. City shall not be obligated to provide any additional funding 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 Funds will only be for the purpose(s) of the park beautification (“Services”). 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 Funds 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 records and supporting documentation for a period of five (5) years after Agreement termination and to make all records available for inspection and audit by City upon written notice.

If to Recipient: Maricopa Rotary Club
20987 N John Wayne Pkwy Suite B-104
Box 264
Maricopa, AZ 85139

7. 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.

8. 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.

9. INDEMNIFICATION: 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 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.

16. 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.

17. 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.

18. 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.

19. **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.

20. **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.)

21. **UNDOCUMENTED WORKERS:** Recipient 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, Recipient hereby warrants to the City that the Recipient 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 the Recipient 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 Recipient or Subcontractor employee who works on this Agreement to ensure that the Recipient or Subcontractor is complying with the Immigration Warranty. Recipient 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 Recipient and any of subcontractors to ensure compliance with Immigration Warranty. Recipient agrees to assist the City in regard to any random verifications performed.

Neither the Recipient 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 the Recipient 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. Notwithstanding the provisions set forth above, a common carrier shall not be considered a subcontractor for purposes of this Agreement.

22. **SCRUTINIZED BUSINESS OPERATIONS:** In signing this Agreement, Recipient 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.

23. NO KICK-BACK CERTIFICATION: Recipient 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 Recipient. 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 Recipient hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

CITY OF MARICOPA

Maricopa Rotary Club

By: _____
Anthony Smith, Mayor

By: _____
Its: _____

ATTEST:

Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney