

## **CONSULTING AGREEMENT INTERIM MANAGEMENT SERVICES**

THIS CONSULTING AGREEMENT (the "Agreement") is entered into between the City of Maricopa, a municipal corporation of the State of Arizona, acting through its City Council (the "City"), and Interim Public Management, LLC, an Arizona limited liability company ("IPM" or "Consultant").

### RECITALS

WHEREAS, the Code and Ordinances of the City empower the Mayor to enter into contracts following proper City Council actions; and

WHEREAS, the City is in need of interim services for the City Manager position; and

WHEREAS, the City desires to enter into this Agreement with IPM to receive an Interim City Manager to provide the services typically related to the position of City Manager in an Arizona municipality and other such related duties as reasonably determined by the City Council (the "Services"); and

WHEREAS, IPM desires to provide an Interim City Manager upon the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Work Schedule. The individual provided by IPM to perform the Services for the City on an ongoing basis initially shall be Patricia Sorensen (the "Manager"), who will commence work as the Interim City Manager on or about July 19, 2013. The City and IPM expect that the Manager will typically perform the Services at the City's facilities during the City's regular business hours (Monday – Thursday, 7:00 A.M. – 6:00 P.M.) and attend all City Council meetings. The Manager may perform the Services for the City for additional days each week, subject to availability, if such additional days are preapproved by the Mayor. The Manager, IPM Representatives and the Chief Executive Officer of IPM (the "CEO") will be reasonably available to the City by telephone on other workdays, subject to additional charges as set forth below.

2. Selection of Manager. IPM and the City agree that Patricia Sorensen is a suitable individual with education and prior City management experience to provide the Services to the

City. If City is not satisfied with the Manager, the City may request that IPM replace such Manager. Alternatively, IPM may replace such Manager if such Manager becomes unavailable to IPM for any reason. In each such event, IPM shall endeavor to provide a reasonably sufficient replacement Manager within 72 hours, and this Agreement shall then apply with respect to that replacement Manager as long as the City Council approves of the replacement Manager.

3. Term. This Agreement shall commence upon its execution by both parties hereto (the "Effective Date") and shall continue until terminated by either party, with or without cause, by providing the other party 30 days' prior written notice of termination.

4. Fees. In consideration of the Services to be rendered by IPM, the City shall pay to IPM the following fees:

Weekly Services Fee:	The City shall pay IPM the following fee for each for each week during which the Consultant or other IPM representatives provide the Services to the City: \$ 3,525 per week
Hourly Access Fee:	The City shall pay IPM the following fee for each additional hour spent providing the Services (when not otherwise receiving a Weekly Services Fee for such hours): \$88 per hour

With respect to Services provided by IPM, the Weekly Services Fees and Hourly Access Fees set forth above shall apply and will increase by five percent as of February 1, 2014 and annually thereafter.

In the event the Mayor requests additional services of IPM, including services of the CEO or other resources or IPM representatives, the Hourly Access fees set forth in this Section shall apply.

In addition, if at any time during the term of this Agreement or within one (1) year thereafter the City hires, contracts with or engages in any way, directly or indirectly, any Consultant that has been provided by IPM to provide Services to the City under this Agreement to perform any services for or for the benefit of the City (other than through IPM), the City hereby agrees to pay IPM an Engagement Fee equal to 16.67% of the annualized salary, fees or other compensation to be paid to or for the benefit of such Consultant, payable to IPM at the time of such engagement of the Consultant's services.

5. Expenses. In addition, IPM shall submit monthly and receive reimbursement for the following expenses including:

- Actual cost for business-related meals, supplies, copies, postage and related expenses.
- An administrative charge of 15% on all reimbursable expenses.

In addition, the City will provide, at the City's sole expense:

- A computer and access to any other equipment needed for performance of the services.
- Office space reasonably suitable to performance of the interim management services, including internet service and a land-line telephone and associated service (including long distance).

6. Invoicing and Payment. IPM will invoice the City bi-monthly for agreed upon fees, expenses and administrative charges as set forth herein, which invoices are payable by City on net 15-day payment terms. Late payments will be subject to a service charge of one and one-half percent (1.5%) per month, or the maximum charge permitted by law, whichever is less. In addition to charging interest, IPM reserves the right to suspend performance of the Services while any amount due hereunder is past due and remains unpaid.

7. Independent Contractor Status. With respect to the services provided by IPM hereunder, IPM shall be an independent contractor, and no Consultant shall be construed in any way to be an employee of the City. IPM shall be responsible for providing proper compensation to the Consultants and all other IPM representatives per IPM's agreed terms therewith, and no employee or contractor of IPM shall be entitled to or have any right to demand salary, wages, benefits, employment or income taxes, reimbursements, workers compensation coverage, retirement, insurance or any other benefit, compensation or remuneration directly from the City, whether or not the City affords any such payment or benefit to its employees. Notwithstanding the foregoing, if applicable Client shall be responsible to pay any alternative pension contributions if required by state law that arise as a result of the Services provided hereunder; Client agrees that it shall otherwise pay no wages, salary or other forms of direct or indirect compensation, including employee benefits, to any Consultant.

8. Compliance with Law. IPM agrees to comply, and to ensure that the Consultants and all other IPM representatives comply, with the provisions of Federal law, State statutes, City Code and any and all other applicable laws.

9. Indemnification. IPM and all Consultants and IPM representatives shall be entitled to the defense and indemnification provisions of City Code and any other indemnification protections available by statute.

10. Bonding. The City shall provide all required bonding relating to the performance of Services as set forth herein.

11. Performance Warranty. IPM warrants that the Services rendered by the Consultants will conform to the requirements of this Agreement and to the prevailing professional standards in the Phoenix metropolitan area.

12. Insurance.

12.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of IPM, IPM shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, 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. 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.

c. 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.

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

e. 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 IPM. IPM shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

f. 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. IPM shall be solely responsible for any such deductible or self-insured retention amount.

g. Evidence of Insurance. Prior to commencing any work or services under this Agreement, IPM will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by IPM's insurance 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. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be IPM's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date.

12.2 Required Insurance Coverage. IPM shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Completed Operations Annual Aggregate and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured.

12.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially change without 30 days' prior written notice to the City.

13. INDEMNIFICATION:

a. Indemnification by IPM. Except as otherwise provided in Section 13(b), IPM 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 reasonable attorneys' fees, which arise out of, or are in any way connected with the performance of services under this Agreement by IPM or the Consultants or agents and from all claims by the Consultants and agents for compensation for services rendered in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all grossly negligent acts or omissions, willful misconduct or grossly negligent conduct, whether active or passive, on the part of IPM or the Consultants or agents. This section shall survive the expiration or early termination of the Agreement.

b. Indemnification by City. City shall defend, indemnify and hold IPM, its officers and employees harmless from and against any and all loss, damage, claim for damage, liability, expense or cost, including reasonable attorneys' fees which arise from or relate in any way to any act or omission of City, or its employees, agents or representatives in implementing the terms of or undertaken in fulfillment of City's obligations under this Agreement. The City shall also defend, indemnify and hold IPM, its officers and the Consultants harmless from and against all loss, damage, claim for damage, liability, expense or costs, including reasonable attorneys' fees which arise from or relate in any way to the acts of the Consultants while acting within the course and scope of providing services to City under this Agreement; provided,

however, that this indemnification shall not apply to any grossly negligent acts or omissions, willful misconduct or grossly negligent conduct, whether active or passive, on the part of the Consultant. This section shall survive the expiration or early termination of the Agreement.

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 IPM 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 IPM 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 IPM. 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. Applicable Law; Venue. In the performance of this Agreement, IPM shall abide by and conform to any and all laws of the United States, State of Arizona and City of Maricopa, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Pinal County, State of Arizona.

16. Miscellaneous.

16.1 Amendments. Except as may be otherwise stated herein, this Agreement may be modified only by a written amendment properly approved by the City Council and signed by persons duly authorized to enter into contracts on behalf of the City and IPM.

16.2 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

16.3 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

16.4 Relationship of the Parties. 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. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. IPM is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and IPM agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

16.5 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to interim City Manager Services, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. Notwithstanding the foregoing, the Agreement entered into between IPM and the City on August 7, 2012 regarding interim services for other City positions shall remain in full force and effect. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

16.6 Assignment. No right or interest in this Agreement shall be assigned by IPM without prior, written permission of the City signed by the Mayor and no delegation of any duty of IPM shall be made without prior, written permission of the City signed by the Mayor, provided, however, that the City hereby agrees that IPM may engage subcontractors to perform the Services, subject to IPM's compliance with the provisions of Sections 1 and 2 hereof. Any attempted assignment or delegation by IPM in violation of this provision shall be a breach of this Agreement by IPM.

16.7 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release IPM from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

16.8 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

16.9 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (c) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:                   City of Maricopa  
45145 W. Madison Ave.  
PO Box 610  
Maricopa, AZ 85139  
Attn: The Honorable Christian Price

With copy to:                   Fitzgibbons Law Offices  
1115 East Cottonwood Lane, Suite 150  
Casa Grande, AZ 85222-2950  
Attn: Denis Fitzgibbons, City Attorney-Maricopa

If to IPM:                       Interim Public Management, LLC  
16868 N. Stoneridge Court  
Fountain Hills, Arizona 85268  
Attn: Timothy G. Pickering, CEO

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (c) the following business day after being given to a recognized overnight delivery service, whichever is earliest, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

16.10 Confidentiality of Records. IPM shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform IPM's duties under this Agreement. Persons requesting such information should be referred to the City. IPM also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of IPM as needed for the performance of duties under this Agreement.

16.11 Waiver of Terms and Conditions. The failure of City or IPM 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.

16.12 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 contract.

16.13 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: IPM 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. IPM 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.)

16.14 Undocumented Workers. IPM 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, IPM hereby warrants to the City that IPM 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 IPM 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 IPM or Subcontractor employee who works on this Agreement to ensure that IPM or Subcontractor is complying with the Immigration Warranty. IPM 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 IPM and any of subcontractors to ensure compliance with Immigration Warranty. IPM agrees to assist the City in regard to any random verification(s) performed.

Neither IPM nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if it establishes 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 IPM 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.

16.15 No Kick-back Certification. IPM 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 IPM. 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 IPM 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 set forth below.

CITY OF MARICOPA

By: \_\_\_\_\_  
Christian Price, Mayor

ATTEST:

\_\_\_\_\_  
Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Denis Fitzgibbons, City Attorney

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

**Agreed to and accepted by** INTERIM PUBLIC MANAGEMENT, LLC

By: \_\_\_\_\_  
Tim Pickering, CEO