

## CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") made this 16<sup>th</sup> day of July, 2013, by and between **The City of Maricopa**, an Arizona municipal corporation (hereinafter "City") and **Nexus Consulting LLC**, an Arizona Corporation, 40 North Central Avenue, 14<sup>th</sup> Floor, Phoenix, Arizona 85004 (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 Agenda, to include 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 City a written monthly update of progress and 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 Company.
3. Conflicts of Interest. Prior to acceptance of any new federal client, Consultant will notify the City 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) Monthly Fee: City shall pay to Consultant during the term of this Agreement a monthly fee of \$7,500.00.

(b) Reimbursement. City shall reimburse Consultant for the payment of all out-of-pocket expenses incurred relative to Consultant's duties, including travel and entertainment expenses, accommodations, long distance telephone calls, special mailing and delivery expenses, and other such similar expenses incurred by Consultant under this Agreement in an amount not to exceed a total of \$6,000.00 for the duration of the Agreement. Individual expenses exceeding \$100.00 shall only be incurred with prior approval of the City.

(c) Invoice; Interest on Unpaid Balance. Consultant shall render a monthly invoice setting forth (i) the hourly fees for the month, (ii) the nature and amount of any costs to be reimbursed pursuant to Section 4(b), 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, 2013, and shall continue until June 30, 2014 or until terminated by either party upon thirty (30) days prior written notice, 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. Scrutinized Business Operations. In signing this Agreement, Consultant certifies pursuant to A.R.S. Section 35-391 that they do not have scrutinized business operations in the Sudan and pursuant to A.R.S. Section 35-393 that they do not have scrutinized business operations in Iran.
16. 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.

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

#### **CITY CONSULTANT**

City of Maricopa  
a Municipal Corporation  
45145 W. Madison Avenue  
P. O. Box 610  
Maricopa, Arizona 85139

Nexus Consulting, LLC  
an Arizona Corporation  
40 N. Central Avenue, 14<sup>th</sup> Floor  
Phoenix, Arizona 85004

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

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City Clerk

Approved As to Form:

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City Attorney