

PUBLIC SERVICE AWARD AGREEMENT

THIS PUBLIC SERVICE AWARD AGREEMENT (“Agreement”) is made and entered into this 17th day of July 2012, by and between The City of Maricopa, Arizona, an Arizona municipal corporation (“City”), and the Maricopa Economic Development Alliance (“MEDA”) an Arizona non-profit corporation (“Recipient”).

WHEREAS, A.R.S. §9-500.11 authorizes cities and towns to spend public monies for and in connection with economic development activities that the governing body of the city or town has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the city or town; and

WHEREAS, the Recipient is a local non-profit corporation in good standing with the State of Arizona;

WHEREAS, the Recipient is committed to ensuring City becomes a top location choice for new investment in Arizona by encouraging the formation, attraction, development, growth and retention of business and investment that strengthens the economic vitality of the City;

WHEREAS, the City has a need for assistance in the areas of economic development marketing, lead generation, market research and strategic planning;

WHEREAS, City desires to award public monies to Recipient for provision of economic development services in these areas; and

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

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:** During Fiscal Year 2012-2013, the City shall appropriate to Recipient \$25,000.00 annually (“Award Fund”). The Award Fund shall be remitted to Recipient on a quarterly basis as a match to private dollars raised by Recipient. At the end of each quarter (September 30, December 31, March 31 and June 30), Recipient shall submit to City a detail of the private funds raised during such quarter signed and attested to by an officer of the Recipient (“Funding Request”). The City shall, within thirty (30) days of its receipt of the Funding Request, remit to the Recipient an amount equal to the Funding Request for such quarter up to the outstanding balance available in the Award Fund. Once the Award Fund has been fully paid to Recipient, the City shall have no further funding obligation under this Agreement and the Recipient will have no further obligation to report on its private fund raising efforts. The Recipient may withhold the name of any private donor that expressly requests that their donation remain confidential. In the event this Agreement is terminated prior to its full term as provided for herein, such appropriations shall be immediately discontinued.

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 Fund will only be for the purpose(s) stated in the Scope of Services ("Services") which is attached hereto as Exhibit A and incorporated herein by reference. 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.

f.) Recipient agrees to submit a quarterly written report indicating the activities, successes and major transactions that have occurred due to these Award Funds and in accordance with the Scope of Services as described in Exhibit A.

g.) Recipient agrees that any expenses incurred by Recipient for approved Services which exceed the Award Fund provided pursuant to this Agreement shall be the sole responsibility of the Recipient unless otherwise specified in writing by the City.

3. CITY'S DUTIES: City shall arrange for access to and make all provisions necessary for Recipient to enter upon public and private property as required for Recipient to perform the Services hereunder.

4. TERM OF AGREEMENT: This Agreement shall terminate on June 30, 2013. This Agreement may be terminated by either party upon thirty (30) days written notice. Recipient may suspend its Services should an Award Fund remain delinquent for thirty (30) days from its Due Date.

5. TERMINATION FOR FAILURE TO APPROPRIATE FUNDS. The parties acknowledge that this Agreement is subject to annual budget appropriations and failure by the City to appropriate funds to implement the terms of this Agreement shall immediately terminate this Agreement.

6. RECIPIENT'S STANDARD OF PERFORMANCE: While performing the Services, Recipient shall exercise the reasonable care and skill customarily exercised by reputable members of Recipient's profession practicing in the Phoenix Metropolitan Area, and shall use

reasonable diligence and best judgment while exercising its skill and expertise. Recipient shall be responsible for all errors and omissions Recipient commits in the performance of this Agreement that are a breach of this standard.

7. NOTICES: All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City: City of Maricopa Attn: City Manager PO Box 610 Maricopa, AZ 85139

If to Recipient: Maricopa Economic Development Alliance, 20987 North John Wayne Parkway, Suite B-104, PMB 384, Maricopa, AZ 85138

8. 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.

9. UNCONTROLLABLEFORCES: 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.

10. 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.

11. 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.

12. 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.

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, if applicable, 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:** Subject to existing law, and regulations, illegal or undocumented aliens will not be employed by the Recipient for any work or services to be performed pursuant to this Agreement. The Recipient will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this Agreement. Recipient agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2)) (the “INA employment provisions”), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented aliens. Under the terms of this Agreement, the Recipient shall not knowingly hire or employ for any work or services performed pursuant to this Agreement any workers or employees not lawfully authorized to work under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach 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.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this 17th day of July, 2012.

CITY OF Maricopa

Maricopa Economic Development Alliance
an Arizona nonprofit corporation

By: _____
Christian Price, Mayor

By: _____
Keith A. Kirkman
Chairman

ATTEST:

LeeAnne Schirato, Deputy City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney

EXHIBIT A
Scope of Services
Maricopa Economic Development Alliance

The following describes the Scope of Services to be provided to the City of Maricopa by the Maricopa Economic Development Alliance (“Recipient”).

1. *Lead generation and prospect resource services.*
 - a. To focus on generating new business attraction leads and helping to vet out leads that approach the City, Recipient will:
 - i. Assist the City in discussions with prospective developers and employers to determine their viability as well as their suitability as a good match for Maricopa per the City’s General Plan and Economic Development Strategic Plan.
2. *Partner with the City in the areas of business retention, attraction and expansion, specifically in the tech entrepreneur sector.*
 - a. Partner in calling on existing employers for business intelligence and policy adjustment
 - b. Continue the pilot small business assistance program, the Management Technical Assistance Program