

CONSULTING AGREEMENT

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 Manager (the "City"), and Interim Public Management, LLC, an Arizona limited liability company ("IPM").

RECITALS

WHEREAS, the Code and Ordinances of the City empower the City Manager of the City (the "City Manager") to enter into contracts following proper City Council actions; and

WHEREAS, the City is in need of consultative planning and zoning services for its Development Services Department and other consultative services from time to time; and

WHEREAS, the City desires to enter into this Agreement for IPM to provide professional planning and zoning management and consultative services and other such related services as may reasonably be requested by the City Manager from time to time (the "Services") upon the terms and conditions set forth herein; and

WHEREAS, IPM desires to provide the Services 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. Details of Services. For each engagement hereunder, a description of the Services to be provided, the expected start date, fees and expenses, and other details regarding the Services shall be set forth in a Schedule to this Agreement signed by the City Manager and IPM. The City hereby represents that, for as long as IPM is included on the City's list of approved vendors for services exceeding \$25,000, the City Council has fully authorized and empowered the City Manager to enter into services agreements, including Schedules to this Agreement, with IPM in excess of \$25,000 without further City Council approval. Each of the individuals to be provided by IPM to perform the Services shall be referred to herein as a "Consultant" and collectively "Consultants." In addition, Consultants, IPM representatives and the Chief Executive Officer of IPM (the "CEO") will be reasonably available to the City for additional workdays and/or hours, by telephone and email, subject to additional charges based on the fee structure set forth in the applicable Schedule, if such additional work and charges have been

preapproved in writing by the City Manager, who may authorize additional work and charges in writing.

2. Selection of Consultants. IPM and the City have agreed to a certain Consultant to provide Services to the City, and this engagement will become effective upon the Effective Date (as defined below). IPM and the City agree such Consultant has been selected to perform the Services after mutual consultation and is a suitable individual with sufficient education and prior experience to provide the Services to the City. After the Effective Date, additional IPM Consultants may be engaged to provide Services under the terms of this Agreement as agreed by separate Schedule signed or approved by email by both IPM and the City Manager. If the City is not satisfied with any such Consultant within the first three workdays of Services performed by such Consultant, the City may request that IPM replace such Consultant. Alternatively, IPM may replace a Consultant if such Consultant becomes unavailable to IPM for any reason. In each such event, IPM shall endeavor to provide a reasonably sufficient replacement Consultant within 72 hours, and this Agreement and the applicable Schedule shall then apply with respect to that replacement Consultant.

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. Each Schedule shall set forth the terms under which it may be terminated. Any termination of this Agreement shall not automatically terminate any then-effective Schedule(s), each of which must be terminated pursuant to its specific terms and conditions.

4. Fees, Invoicing and Payment. In consideration of the Services to be rendered by IPM, the City shall pay to IPM all fees and expenses arising pursuant to the terms of each active Schedule. In addition, if at any time during the term of this Agreement or the applicable Schedule 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 or any Schedule hereto 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.

IPM will invoice the City monthly for all amounts arising under this Agreement 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.

5. 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.

6. 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.

7. 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.

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

9. 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.

10. Insurance.

10.1 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.

10.2 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.

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

11. INDEMNIFICATION:

a. Indemnification by IPM. Except as otherwise provided in Section 11(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 Consultants. This section shall survive the expiration or early termination of the Agreement.

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 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.

13. 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.

14. Miscellaneous.

14.1 Amendments. Except as may be otherwise stated herein, this Agreement or any Schedule hereto may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and IPM.

14.2 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.

14.3 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.

14.4 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.

14.5 Entire Agreement; Interpretation; Parol Evidence. This Agreement and the Schedules hereto collectively represent the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. 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

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.

14.10 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.

14.11 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.

14.12 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.

14.13 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.)

14.14 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.

14.15 Scrutinized Business Operations. In signing this Agreement, IPM certifies pursuant to ARS §35-391 that it does not have scrutinized business operations in the Sudan and pursuant to ARS §35-393 that it does not have scrutinized business operations in Iran.

14.16 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: _____
Brenda S. Fischer, City Manager

ATTEST:

Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney

Dated this ____ day of _____, 2012.

Agreed to and accepted by INTERIM PUBLIC MANAGEMENT, LLC

By: _____
Tim Pickering, CEO

SCHEDULE 1

TO

_____, **2012 CONSULTING AGREEMENT**

Effective Date of Schedule: [Insert date]

Client: City of Maricopa, Arizona

Services: Planning and Zoning Consulting Services for the Development Services Department

Expected Commencement Date for Engagement: July 30, 2012

Expected End Date for Engagement: January 31, 2013

Expected Onsite Services Performance: 4 days per week, typically Monday through Thursday 7:00 a.m. to 6:00 p.m.

Fees: The City shall pay to IPM the Fees set forth below, in consideration of the Services rendered by IPM hereunder:

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: \$2,750.00 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): \$75.00 per hour

With respect to Services for this Schedule 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, 2013 and annually thereafter.

Expenses. The City shall reimburse IPM for the following expenses:

- Actual cost for business-related meals, supplies, copies, postage, and other customarily reimbursed expenses reasonably related to the performance of the Services; and
- An administrative charge of 15% on all reimbursed expenses.

Term: This Schedule shall commence upon its stated Commencement Date and shall continue until terminated either (a) by either party without cause by providing the other party 30 days' prior written notice of termination; or (b) by either party with cause by providing the other party at least fifteen (15) days' prior written notice of termination for cause, provided that if the party giving such notice agrees that such cause has been cured during the first seven (7) days of such notice period then such notice of termination shall have no force or effect.

IN WITNESS WHEREOF the parties have executed this Schedule, effective on the Effective Date described above.

CITY OF MARICOPA

By: _____
Brenda S. Fischer, City Manager

ATTEST:

Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney

Dated this ____ day of _____, 2012.

Agreed to and accepted by INTERIM PUBLIC MANAGEMENT, LLC

By: _____
Tim Pickering, CEO