

**MASTER PLANNING AND MARKETING AGREEMENT**

THIS AGREEMENT is made and entered into <sup>Project</sup> this 25 day of <sup>June</sup> ~~May~~, 2014 (“Effective Date”), by and between the CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation (“City”), and ~~THE~~ BOYER COMPANY ~~(ARIZONA)~~, L.C., a Utah limited liability (“Boyer”) to plan and market the Estrella Gin Property located at 45862 West Garvey Road, Maricopa, Arizona.

WHEREAS, City currently owns approximately forty (40) acres of property known as the Estrella Gin Property generally located at 45862 West Garvey Road, Maricopa, Arizona (“Premises”);

WHEREAS, City desires that the Premises be developed for light industrial and flex space use with some available office and retail space, herein referred to as the “Estrella Gin Business Park”; and

WHEREAS, on January 15, 2014, City and Boyer executed a Letter of Intent regarding the planning, marketing and future development of the Premises; and

WHEREAS, City desires for Boyer to furnish professional planning and marketing services in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda, which are appended hereto by mutual agreement of the parties; and

WHEREAS, in procuring these professional services, City has complied with the procedures set forth in Section 3-215 of the City of Maricopa’s City Code.

NOW, THEREFORE, City agrees to retain and does hereby retain Boyer, and Boyer agrees to provide the services required according to the terms and conditions and for the consideration hereinafter set forth:

1. **BOYER’S DUTIES:** Boyer agrees to provide a conceptual master plan (“Conceptual Master Plan”), conceptual building designs (“Conceptual Building Designs”), draft Covenants, Conditions and Restrictions and marketing services to potential building tenants for the Premises as set forth herein in accordance with City, State and Federal requirements, where applicable.

Within thirty (30) business days of the Effective Date, Boyer shall provide City with a Conceptual Master Plan of the Premises for the approval of the City, which approval shall not be unreasonably withheld. City shall provide written feedback and any requested changes to the Conceptual Master Plan to Boyer within thirty (30) business days of receiving the Conceptual Master Plan. Boyer shall incorporate those changes requested by the City which Boyer believes are appropriate and shall resubmit the Conceptual Master Plan to the City within ten (10) business days of Boyer’s receipt of comments from the City. The City shall provide written feedback and any requested changes to the modified Conceptual Master Plan to Boyer within ten (10) business days of receiving the revised Conceptual Master Plan. If the City has additional modifications to the revised Conceptual Master Plan, Boyer shall revise the Conceptual Master Plan and

to the revised Conceptual Master Plan, Boyer shall revise the Conceptual Master Plan and resubmitted it to the City in accordance with the foregoing procedure until such time as the Conceptual Master Plan has been agreed on by the City and Boyer. City and Boyer acknowledge that this agreed upon Conceptual Master Plan will reflect the general intent of the subdivision and development of the Premises. City and Boyer further acknowledge that as Boyer finalizes the development plans, which are dependent upon market forces, the Conceptual Master Plan may be amended from time to time subject to approval from the City, which approval will not be unreasonably withheld, conditioned or delayed.

Within thirty (30) business days of the date the Conceptual Master Plan is approved by the City, Boyer shall provide City with Conceptual Building Designs for the Premises for the approval of the City, which approval shall not be unreasonably withheld. City shall provide written feedback and any request changes to the Conceptual Building Designs to Boyer within thirty (30) business days of receiving the Conceptual Building Designs. Boyer shall incorporate those changes requested by the City which Boyer believes are appropriate and shall resubmit the Conceptual Building Designs to the City within ten (10) business days of Boyer's receipt of comments from the City. The City shall provide written feedback and any requested changes to the modified Conceptual Building Designs to Boyer within ten (10) business days of receiving the revised Conceptual Building Designs. If the City has additional modifications to the revised Conceptual Building Designs, Boyer shall revise the Conceptual Building Designs and resubmit it to the City in accordance with the foregoing procedure until such time as the Conceptual Building Designs have been agreed on by the City and Boyer. City and Boyer acknowledge that the agreed upon Conceptual Building Designs will reflect the general intent regarding the design of the buildings on the Premises. City and Boyer further acknowledge that as Boyer finalizes the development plans, which are dependent upon market forces, the Conceptual Building Designs may be amended from time to time subject to approval from the City, which approval will not be unreasonably withheld, conditioned or delayed.

Within thirty (30) business days of the date the Conceptual Building Designs are approved, Boyer shall design, print, and begin distributing Estrella Gin Business Park marketing collateral including, but not limited to, general marketing glossy's for print and marketing on industry standard websites like Costar and/or LoopNet. Marketing collateral shall be high quality in nature and consistent with the quality of work generally found in the Greater Phoenix real estate market. Marketing collateral and Estrella Gin Business Park information shall be posted to LoopNet, Costar and other real estate marketing mediums for lead generation purposes.

Within thirty (30) business days of the date the Conceptual Building Designs are approved, Boyer shall provide City with draft Covenants, Conditions and Restrictions (CC&Rs) for the Premises. These CC&Rs shall incorporate widely accepted best practices for the development and maintenance of a 21<sup>st</sup> century business park. City shall provide written feedback and request changes to the CC&Rs within thirty (30) business days of receiving the CC&Rs. Boyer shall incorporate those changes requested by the City which Boyer believes are appropriate and shall resubmit the CC&Rs to the City

within ten (10) business days of Boyer's receipt of comments from the City. The City shall provide written feedback and any requested changes to the modified CC&Rs to Boyer within ten (10) business days of receiving the revised CC&Rs. If the City has additional modifications to the revised CC&Rs, Boyer shall revise the CC&R's and resubmit the CC&R's to the City in accordance with the foregoing procedure until such time as the CC&Rs have been agreed on by the City and Boyer

City shall have absolute and unrestrictive rights to use the Conceptual Master Plan, Conceptual Building Designs and the Covenants, Conditions and Restrictions for marketing, business development, and promotion of the Premises and in conjunction with other City initiatives.

2. LEASE OR PURCHASE OF PREMISES: In exchange for the services provided pursuant to this Agreement and provided Boyer has obtained pre-leasing commitments for at least sixty percent (60%) of a building that is at least 36,000 square feet to be located on the Premises, or a lesser percentage agreed upon by Boyer and City, ("Minimum Pre-Leasing Commitments") during the term of this Agreement, Boyer shall have the right, in the City's sole discretion, to either purchase the Premises or lease the Premises with an option to purchase the Premises in the future. Once Boyer has obtained the Minimum Pre-Leasing Commitments, Boyer shall notify City of its intent to begin construction and its desire to lease or purchase the Premises. Upon receipt of notice from Boyer, City and Boyer will begin negotiating a Disposition and Development Agreement ("DDA") for the sale or lease and development of the Premises. The DDA shall comply with any and all applicable laws, rules and regulations including, but not limited to, A.R.S. §9-403. The City shall have the sole and absolute discretion to determine whether the Premises will be sold or leased. Boyer may purchase or lease the Premises in portions which are less than the whole of the Premises until the entire Premises are purchased or leased. If Minimum Pre-Leasing Commitments are not obtained during the term of this Agreement, Boyer shall deliver to City all work in any state of completion at the date of effective termination and this Agreement and all rights and obligations of either party hereunder shall immediately terminate.

If the City elects to sell the Premises to Boyer, the initial price shall be \$ .75 per square foot ("Purchase Price"). If the entire Premises are not purchased during the initial term of the DDA and if the DDA is extended by the Parties in accordance with the terms of the DDA, the Purchase Price shall be increased each year of the DDA by the most recently published Bureau of Labor Statistic's Annual Consumer Price Index Western Region Rate ("Purchase Price Escalator" or "PPE") until the entire Premises have been purchased by Boyer. At any time during the term of the DDA, if either party believes that the Purchase Price, as increased by PPE, does not reflect the fair market value of the Premises being purchased, they shall give notice to the other party. The City and Boyer shall work in good faith to agree on a market value for the Property; provided, if the City and Boyer cannot agree on the Purchase Price, either party may have the Premises appraised by an independent third party appraiser. In the event of such an appraisal, the Purchase Price shall be immediately adjusted to be equal to the appraisal price. If the other party disputes the appraised value, which the other party shall provide written notice of such dispute within thirty (30) days of such party's receipt of the other party's

appraisal, that party may obtain another appraisal and the Purchase Price shall be the arithmetic average of the two appraisals. In no event shall the Purchase Price for any portion of the Premises be less than \$ .75 per square foot.

If the City elects to lease the Premises to Boyer, the parties shall enter into a financeable ground lease and the rental amount shall be twelve percent (12%) per annum of the Purchase Price. If the entire Premises are not leased during the initial term of the DDA and if the DDA is extended by the Parties in accordance with the terms of the DDA, the Purchase Price used to calculate the rental amount shall be increased each year of the DDA by the PPE. In no event shall the Purchase Price used to calculate the rental amount be less than \$ .75 per square foot.

For clarification, to calculate Purchase Price in the second year of the DDA, the PPE shall be divided by one hundred (100) and the result shall be added to the year one (1) Purchase Price. (i.e. Year Two Purchase Price =  $(PPE/100) + \$.75$ ) To calculate the Purchase Price in the third year of the DDA, the PPE shall be divided by one hundred (100) and the result shall be added to the Purchase Price calculated for the second year of the DDA (i.e., Year Three Purchase Price =  $(PPE/100) + \text{Year Two Purchase Price}$ ).

The terms set forth above for the purchase or lease price of the Premises and the additional terms related to the sale or lease, subdivision and development of the Premises shall be reflected in the negotiated DDA.

3. TERM: The initial term of this Agreement shall be for one (1) year. At least thirty (30) days prior to the expiration of the initial term and upon mutual agreement of the parties, this Agreement may be extended for one (1) additional one (1) year term.

4. CITY'S STANDARD OF PERFORMANCE: City shall furnish Boyer with all data, information, and other supporting services necessary for Boyer to provide the services provided for herein.

5. BOYER'S STANDARD OF PERFORMANCE: While performing the services, Boyer shall exercise the reasonable professional care and skill customarily exercised by reputable members of Boyer's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. Boyer shall be responsible for all errors and omissions Boyer commits in the performance of this Agreement that are a breach of this standard.

6. CONFIDENTIALITY: To the extent allowed by law, each party, and any subcontractors or individuals hired by either party to perform the services under this Agreement, shall keep any information concerning the services performed pursuant to this Agreement confidential and agree that they will not make any statement, give an interview or provide any information to any person, corporation or other entity, including without limitation any media source, in relation to the project or the services to be provided under this Agreement without the prior written consent of the other party, except disclosures may be made to (a) employees, advisors, agent and contractors, (b) lenders, and (c) as otherwise required by a court order or applicable law. Boyer, and any

subcontractors or individuals hired by Boyer, agree not to disclose to any other person or entity (unless required by law) any confidential information concerning City matters during and after this Agreement. City, and any subcontractors or individuals hired by the City, agree not to disclose to any other person or entity (unless required by law) any confidential information concerning Boyer during and after this Agreement.

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  
39700 W. Civic Center Plaza  
Maricopa, AZ 85138

If to Boyer:

THE BOYER COMPANY (ARIZONA), L.C.  
Attn: Matt Jensen  
90 South 400 West, Suite 200  
Salt Lake City, UT 84101

8. **TERMINATION:** This Agreement may be terminated by Boyer upon ninety (90) days written notice. If this Agreement is terminated, Boyer shall deliver to City all work in any state of completion at the date of effective termination.

9. **SUBCONTRACTORS:** Boyer agrees that it is as fully responsible to City for the negligent acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Boyer to the extent arising out of services performed under this Agreement. Nothing contained in the Agreement shall create any contractual relations between any subcontractor and City.

10. **RECORDS:** Records of Boyer's out of pocket costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Boyer shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours and upon not less than five (5) business days prior written notice. Any such audit by the City shall be performed by an employee of the City or a Certified Public Accountant (the "CPA") and shall not unreasonably interfere with Boyer's operations. The City agrees to keep all information thereby obtained by the City confidential and to obtain the agreement of its CPA to keep all such information confidential. The City shall provide a copy of such CPA confidentiality agreements to Boyer promptly upon request. The City shall complete the audit and present the findings of such audit, to Boyer, in writing, within two (2) months of the City's delivery of notice

that the City is commencing an audit.

11. INSURANCE:

11.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Boyer, Boyer shall purchase and maintain, at its own expense, hereinafter-stipulated minimum insurance with insurance companies duly licensed by the State of Arizona 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 City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Boyer. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Boyer from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. 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.

d. 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 City, unless specified otherwise in this Agreement.

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

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

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

h. 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. Boyer shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Boyer shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting City and Boyer. Boyer shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Boyer shall furnish City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Boyer's 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. If a certificate of insurance is submitted as verification of coverage, City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Boyer's responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials, and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) Boyer's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Boyer under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

#### 11.2 Required Insurance Coverage.

a. Commercial General Liability. Boyer shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from Premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy forms CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. Boyer shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence Boyer's owned, hired and non-owned vehicles assigned to or used in the performance of Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Professional Liability (Errors and Omissions Liability). Boyer shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Work performed by Boyer, or anyone employed by Boyer, or anyone for whose negligent acts, mistakes, errors and omissions Boyer is legally liable, with an



unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, Boyer warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

d. Workers' Compensation Insurance. Boyer shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Boyer's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

12. UNCONTROLLABLE FORCES: City and Boyer 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.

13. INDEMNIFICATION OF CITY: To the fullest extent permitted by law, Boyer 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 is in any way connected with the performance of work under this Agreement by Boyer, or any of Boyer's employees, agents or subconsultants, and from all claims by Boyer's employees, subconsultants and agents for compensation for services rendered to Boyer in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall only apply to any and all negligent acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Boyer or Boyer's employees, subconsultants or agents arising out of this Agreement. This section shall survive the expiration or early termination of the Agreement.

14. INDEMNIFICATION OF BOYER: To the fullest extent permitted by law, City shall defend, indemnify, and hold Boyer, 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 is in any way connected with the performance of work under this Agreement by City, or any of City's employees, agents or subconsultants, and from all claims by City's employees, subconsultants and agents for compensation for services rendered to City in the performance of this Agreement, notwithstanding that Boyer may have benefited from their services. This indemnification

provision shall only apply to any and all negligent acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of City or City's employees, subconsultants or agents arising out of this Agreement. This section shall survive the expiration or early termination of the Agreement.

15. WAIVER OF TERMS AND CONDITIONS: The failure of City or Boyer 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. INDEPENDENT CONTRACTOR: Boyer shall at all times during Boyer's performance of the services retain Boyer's status as independent contractor. Boyer's employees shall under no circumstances be considered or held 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 Boyer. Boyer shall not have any authority to bind or act on behalf of the City.

17. 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 Boyer 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 Boyer 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 Boyer. 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.

18. 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.

19. OWNERSHIP OF RECORDS AND REPORTS: All of the files, reports, documents, information, and data prepared or assembled by Boyer under this Agreement shall be and remain the property of City and shall be forwarded to City at any time City

requires such papers.

20. LICENSES AND PERMITS: Boyer represents and warrants that any license or permit necessary to perform Services under this Agreement is current and valid. Boyer understands that the activity described herein may constitute "doing business in the "City of Maricopa" and Boyer agrees to obtain any necessary 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 subconsultants within the corporate city limits, will invoke the same business tax regulations on any subconsultants, and Boyer ensures its subconsultants will obtain any required business tax license. Failure of Boyer to obtain said permits prior to the commencement of its work shall constitute a breach of this agreement.

21. NONASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise and qualifications of Boyer. Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Boyer shall not assign any monies due or to become due to it hereunder without the prior written consent of City. This prohibition on assignments shall not apply if the assignment is to a subsidiary or affiliate, a majority of which is owned by Boyer.

22. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Boyer and supersede 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 Supporting Documents, 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.

23. 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.

24. 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.

25. 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 CFR Parts 35 and 36. (Non-Discrimination: Boyer 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. Boyer 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.)

26. FEDERAL REGULATIONS: Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Boyer acknowledges, by signature to this agreement, that: Boyer is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; Boyer's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

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

Neither Boyer 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 Boyer 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.

28. NO KICK-BACK CERTIFICATION: Boyer 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 Boyer'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 Boyer 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.

**BOYER:**

*Project*

~~THE~~ BOYER COMPANY, L.C.

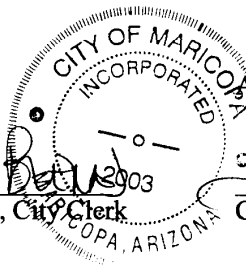
By: *[Signature]*

Title: *Manager*

**CITY OF MARICOPA**

*[Signature]*  
Christian Price, Mayor

ATTEST:



APPROVED AS TO FORM:

*[Signature]*  
Vanessa Bueras, City Clerk

*[Signature]*  
City Attorney



June 26, 2014

Micah Miranda  
**City of Maricopa**  
39700 W. Civic Center Plaza  
Maricopa, AZ 85138

**RE: Master Planning and Marketing Agreement**

Micah,

Enclosed are two (2) fully executed agreements. As I previously mentioned to you, we modified the actual entity name to reflect how our company pursues new projects. I am hopeful that the changes are acceptable. Please let me know if they are not and we can respond accordingly.

Thanks for all of your help. I look forward to working with you and your team over the coming months as we work to make the project a success.

Sincerely,

Matt Jensen  
Project Manager