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ORIGINAL

C-8901  
05/13/2014

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into between the City of Glendale, a municipal corporation of the State of Arizona ("City") acting through City Manager (the "Manager"), and Interim Public Management, LLC, an Arizona limited liability company ("IPM"), authorized to do business in the State of Arizona.

RECITALS

WHEREAS, the Code and Ordinances of the City, City policies and/or City's Council empower the Manager to enter into contracts on behalf of City for professional services; and

WHEREAS, City is in need of professional management-level administrative services; and

WHEREAS, City desires to enter into this Agreement for IPM to provide professional services to City upon the terms and conditions set forth herein and to agree to terms and conditions that will govern other such related services as may be requested by the Manager from time to time (the "Services"); 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. IPM shall provide professional administrative Services to the City on an as assigned, as-needed basis. For each assignment hereunder, prior to the start of work on any such assignment, the City and IPM will mutually agree to a scope and description of the Services to be provided, the expected start date, the applicable fees and expenses IPM may charge to complete the work, the persons provided by IPM to perform the work and any other relevant details regarding the Services to be provided pursuant to the assignment. The terms and conditions of each assignment shall be set forth in a Schedule to this Agreement. Such Schedule must be executed by the Manager and IPM prior to the commencement of the work detailed in the Schedule and such Schedule, once executed, shall be incorporated into and become an enforceable part of this Agreement. Schedule A, as attached hereto, is one such assignment and its terms and conditions shall be immediately binding on the parties on the Effective Date of this Agreement.

2. Selection of Consultants. The individuals to be provided by IPM to perform the Services shall be referred to herein as each a "Consultant" and collectively the "Consultants." In addition, the Consultants, other IPM representatives and the Chief Executive Officer of IPM (the "CEO") will be reasonably available by telephone and email to City for additional workdays and/or hours, subject to appropriate additional charges based on the fee structure set forth in the applicable Schedule, if such additional work and charges have been pre-approved in writing (email acceptable) by the Manager.

IPM and City agree each 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 designated Services to City. IPM may replace a Consultant if such Consultant becomes unavailable to IPM for any reason. In the event the Consultant agreed upon by IPM and the City must be replaced, IPM will endeavor to provide a reasonably sufficient replacement Consultant within two (2) weeks, and this Agreement and the applicable Schedule shall then apply with respect to that replacement Consultant. IPM may use secondary vendors to fulfill any or all of its obligations hereunder without securing City's consent.

3. Term. This Agreement shall commence upon its execution by both parties hereto (the "Effective Date") and shall continue for a period of one (1) year, unless and until this Agreement is terminated by either party, with or without cause. This Agreement may be terminated, in whole or in part, by either party by providing the other party 30 days' prior written notice of termination. Termination of this Agreement and all attachments or amendments hereto shall become effective, and any work being performed under this Agreement shall cease, on the 31<sup>st</sup> day after issuance of such notice, unless the notice provides otherwise. The City, in its sole, unreviewable discretion, may renew the term of this Agreement for four one-year terms, upon the mutual agreement of the parties. The City shall give IPM notice of its intent to renew at least 30 days in advance of the anniversary of the Effective Date of this Agreement. Any failure by the City to provide such notice of intent to renew shall terminate this Agreement, unless the parties agree otherwise.

4. Fees, Invoicing and Payment.

4.1. In consideration of the Services to be rendered by IPM, City shall pay to IPM all fees and expenses as provided in the terms and conditions of any agreed upon Schedule.

4.2. In addition to the fees and expenses City agrees to pay IPM pursuant to any Schedule appended hereto, City agrees to pay IPM a "finder's fee" equal to 20.8% of the annualized salary, fees or other compensation to be paid to or for the benefit of any employee City hires, contracts with or engages in any way, directly or indirectly, as a result of any Service provided by IPM under this Agreement. Such "finder's fee" shall be due and payable to IPM within 30 days of the City hiring, contracting with or engaging any employee or Consultant identified, recommended or referred to the City by IPM.

4.3. City agrees to timely review and approve reports of time worked by IPM employees, if submitted to City.

4.4. IPM will invoice City semi-monthly for all amounts arising hereunder. City will attempt to pay such invoices on net 10-day payment terms. Any payments not made within 45 days shall 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; Obligations and Duties of Parties

IPM is providing Services hereunder as an independent contractor. Neither IPM or any of its Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents shall be construed in any way to be an employee of City.

5.1. As the employer, IPM will maintain all necessary personnel and payroll records for its Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents; calculate their wages and withhold any applicable taxes or fees; remit such taxes to the appropriate governmental entity; pay net wages and benefits, if any, to its employees; and provide employment and workers' compensation insurance coverage as required, and in the amounts required by state and federal law.

5.2. IPM alone shall be responsible for providing proper compensation to its Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents per IPM's agreed terms therewith. No Consultant, employee, contractor, subcontractor, vendor, supplier, representative or agent 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 or indirectly from City, whether or not City affords any such payment or benefit to its employees. IPM shall have the sole authority to assign and/or remove its Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents. Notwithstanding the foregoing, City may request in writing that IPM remove or reassign Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents, and IPM shall not unreasonably withhold its approval of any such request.

5.3. City shall provide IPM's employees with a suitable workplace to perform the tasks provided in any effective Schedule. For purposes of this Section, "Suitable workplace" shall mean, a workplace that complies with all applicable safety and health requirements, including all applicable OSHA regulations. The City also agrees to provide adequate instructions, assistance, supervision and time to IPM so that it can perform the Services in a timely and competent manner. If an IPM employee is given access to any of City's computer equipment or systems, City is responsible for maintaining a current backup copy of any data

associated with those systems and appropriate written internal control procedures relating thereto. City agrees to give IPM immediate written notice of any concern or complaint regarding a Consultant's, employee's, contractor's, subcontractor's, vendor's, supplier's, representative's or agent's performance or conduct. City agrees that it shall report all on-the-job illnesses, accidents and injuries of any Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents to IPM immediately upon City's receipt of notice or knowledge of same.

6. Compliance with Law. IPM agrees to comply, and to ensure that its Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents comply, with any and all applicable provisions of Federal, State, City acts, laws, orders, statutes, regulations, ordinances, and code provisions. City agrees to comply with its obligations under all applicable laws, regulations and orders, including, but not limited to, laws relating to workplace safety and employment discrimination. City represents that its actions under this Agreement do not violate its obligations under any agreement it has with any labor union.

7. Indemnification.

7.1. IPM agrees to indemnify, defend, save and hold harmless City, and its officers, officials, representatives, agents, volunteers and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation)("Losses") bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part by the negligent or willful acts or omissions of IPM or any of its owners, officers, directors, Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents. This indemnity includes any claim or amount arising out of or recovered under the workers' compensation or employment law or arising out of the failure of IPM to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is agreed that IPM will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. . IPM Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents shall be entitled to the defense and indemnification provisions of City's Code if such indemnification protections are provided by law.

7.2. The party that is seeking indemnity from the other party pursuant to this Section 7 shall give the indemnifying party prompt notice of any such claim, allow the indemnifying party to control the defense and settlement thereof, and cooperate with the indemnifying party relating thereto. If the indemnifying party does not assume control of the defense, the indemnified party may do so at the expense of the indemnifying party. Failure or delay of notice of any claim hereunder shall not relieve an indemnifying party of its obligations with respect to such claim except to the extent such indemnifying party can demonstrate that its interests have been materially prejudiced by such failure or delay.

7.3. The provisions of this Section 7 shall survive the termination of this Agreement, but only for such period of time as allowed pursuant to any statute of limitation under Arizona law.

8. 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 for comparable services in the Phoenix metropolitan area. In the event of breach of the foregoing warranty, IPM will undertake whatever actions are necessary to achieve the reasonable and customary professional practices or Services to remedy the deficient Services and will correct the breach at no additional cost. Such breach shall be remedied within 30 days of any notice from the City that it believes the Services provided are deficient or do not meet the industry standard. Except for the warranties described herein, IPM disclaims all other warranties concerning the Services, express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose and any warranty that might otherwise arise pursuant to applicable law. City's remedies and IPM's liability under this Agreement are limited to the remedies and liabilities set forth in this Section 8.

9. Insurance.

9.1. IPM agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverage's or sufficient evidence of qualified self-insured status of same from or in connection with the performance of the work hereunder by IPM, its agents, representatives, or employees:

9.1.1. Commercial General Liability or Business Liability Insurance on an "occurrence" basis for bodily injury and property damage, including personal injury and advertising injury, with limits no less than one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The City, its officers, officials, employees, representatives, agents, and volunteers are to be covered as additional insureds on the CGL or Business Liability policy with respect to liability arising out of work or operations performed.

9.1.2. Professional Liability (Errors and Omissions) or Professional Malpractice coverage with minimum limits of one million dollars (\$1,000,000) each occurrence or claim and one million dollars (\$1,000,000) general aggregate.

9.1.3. Workers' Compensation insurance, as required by the State of Arizona with applicable Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

9.2. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by IPM pursuant this Agreement. In the case of any claims-made policy, the necessary retroactive dates must be shown and must be the earlier of the Effective Date the Agreement or the commencement of any work under a new assignment or Schedule. Extended coverage must be maintained and evidence of insurance

must be provided for at least one (1) year after completion of all work under all Schedules or for one year after the termination of this Agreement, whichever is later.

9.3. IPM hereby grants to City a waiver of any right to subrogation which any insurer of IPM may acquire against the City by virtue of the payment of all loss under such insurance. IPM agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

9.4. As used in this Section, "evidence of insurance" shall mean either providing copies of all applicable certificates of insurance or providing evidence acceptable to the City's Risk Manager that IPM has sufficient assets to self-insure the payment of any claims that may arise hereunder. A Certificate of Insurance shall be completed by IPM's insurance agent(s) as evidence that policies providing the required coverage's, conditions and minimum limits are in full force and effect. Such certificates must be received by the City before work commences. Failure to obtain the required documents prior to the work beginning shall not waive IPM's obligation to provide them. The Certificate shall identify this Agreement and shall provide that the coverage's afforded under the policies shall not be canceled, terminated or limits reduced without at least 30 days prior written notice being given to City. The Certificate of Insurance shall be sent or emailed to the Manager.

9.5. For any claims related to this Agreement, IPM's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, representatives, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, representatives, agents or volunteers shall be excess of IPM's insurance and shall not contribute with it.

10. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona. Any law suit pertaining to this Agreement may be brought only in courts in the County in the State of Arizona in which City is located.

11. Miscellaneous.

11.1. 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 City and IPM.

11.2. Severability. The provisions of this Agreement are severable. To the extent that any term, condition, or provision of or any attachment to this Agreement is held to be invalid by a court of competent jurisdiction, such determination shall not affect any other term, condition, or provision of or any attachment to this Agreement, which shall remain in effect, valid and fully enforceable.

11.3. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, representatives and assigns.

11.4. 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. All previous agreements, whether oral or written, or entered into prior to this Agreement, are hereby revoked and superseded thereby. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

11.5. Waiver. The failure by one party hereto to require performance by the other party shall not be deemed to constitute a waiver of any such breach, nor of any subsequent breach by the other party of any provision of this Agreement, and shall not affect the validity of this Agreement, nor prejudice either party's rights in connection with any subsequent action. This Agreement or any provision hereof may be waived by a party hereto only via a writing signed by such party.

11.6. Force Majeure. IPM will not be responsible for failure or delay in assigning its employees to City if the failure or delay is due to labor disputes and strikes, fire, riot, war, acts of nature or of God, or any other causes entirely beyond the control of IPM.

11.7. Dispute Resolution. The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this Agreement or any Schedule hereto. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, upon which demand the matter shall be submitted to a mediation firm mutually selected by the parties. The mediator shall hear the matter and provide an informal opinion and advice within twenty (20) days following written demand for mediation. Said informal opinion and advice shall not be binding on the parties, but shall be intended to help resolve the dispute. The mediator's fee shall be shared equally by the parties. Each party shall pay its own attorneys' fees and costs. If the dispute has not been resolved, the matter may then be submitted by either party to the judicial system.

11.8. Attorneys' Fees and Costs. Should any legal action, including mediation or other alternative dispute resolution methods, be necessary to enforce any term of provision of this Agreement or to collect any portion of the amount payable hereunder, then all reasonably incurred expenses of such legal action or collection, including witness fees, costs of the proceedings and attorneys' fees, shall be awarded to the substantially prevailing party.

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

If to City: Brenda Fischer, City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, AZ 85301  
Email: bfischer@glendaleaz.com

If to IPM: Interim Public Management, LLC  
16868 North Stoneridge Court  
Fountain Hills, Arizona 85268  
Attn: Timothy G. Pickering, CEO  
Email: tim@interimpbublicmanagment.com

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 the earlier of (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, 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.

11.10. Confidentiality of Records. IPM shall establish and maintain commercially reasonable procedures and controls for the purpose of ensuring information contained in its records or obtained from City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its, Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents, except as required to perform IPM's duties under this Agreement or as compelled by a court of competent jurisdiction. Persons requesting such information should be referred to City.

11.11. 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 2009-09, 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.)

11.12. Compliance With Federal and State Laws. IPM understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

11.12.1. Under the provisions of A.R.S. § 41-4401, IPM hereby warrants to City that IPM and each of its subcontractors 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 "Contractor Immigration Warranty").

11.12.2. City retains the legal right to inspect the papers of any contractor or subcontractor employee who works on this Agreement to ensure that the contractor or subcontractor is complying with the Contractor Immigration Warranty. IPM agrees to assist City in regard to any such inspections.

11.12.3. City may, at its sole discretion, conduct random verification of the employment records of IPM and any subcontractors to ensure compliance with Contractor's Immigration Warranty. IPM agrees to assist City in regard to any random verification performed.

11.12.4. Neither IPM nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if IPM or any subcontractor 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.

11.12.5. The provisions of this Section must be included in any contract that IPM enters into with any and all of its Consultants, employees, contractors, subcontractors, vendors, suppliers, representatives or agents who provide Services under this Agreement or any subcontract.

11.13. No Kick-back Certification. No person has been employed or retained to solicit or secure this Agreement with an arrangement or understanding that a commission, percentage, brokerage or contingent fee shall be paid to him/her. IPM further certifies that no member of City's Council or any employee of City has an individual or personal stake or interest, financial or otherwise, in this Agreement or IPM's business.

11.14. Conflict of Interest. During the term of this Agreement, IPM shall not accept, negotiate or enter into any contract or agreements for Services with any other party, if such contract or agreement will create a conflict of interest, or the appearance of a conflict of interest: (i.) with the timely performance of the work; (ii.) will adversely impact the quality of

the work; or (iii.) will otherwise interfere with the full and adequate completion of any task or work in accordance with this Agreement. In the event IPM believes that a conflict of interest has arisen or may arise during the course of its performance under this Agreement, IPM may either recuse itself from further performance hereunder and terminate this Agreement as provided in Section 3 herein, or may request a determination from the City as to whether a conflict of interest or the appearance of a conflict of interest exists. Any decision by the City is final, unreviewable and not subject to the dispute resolution provisions of Section 11.7 above. The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARS § 38-511.

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

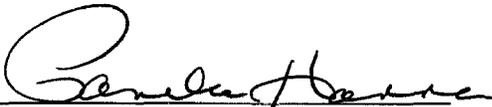
City: City of Glendale, Arizona

  
By: Brenda Fischer, City Manager

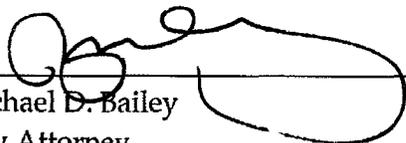
5/13/14

Date

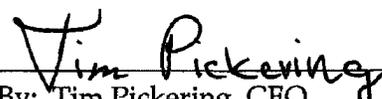
ATTEST:

  
Pam Hanna  
City Clerk (Seal)

APPROVED AS TO FORM:

  
Michael D. Bailey  
City Attorney

Agreed to and accepted by  
Interim Public Management, LLC:

  
By: Tim Pickering, CEO

5/8/2014

Date

**SCHEDULE A  
TO  
PROFESSIONAL SERVICES AGREEMENT**

Effective Date of Schedule: May 1, 2014

City: Glendale, Arizona

Services: Interim Human Resources Consultant

Expected Commencement Date for Engagement: Monday May 5th, 2014.

Expected Services Performance Schedule: 5 days per week, typically Monday through Friday, excluding holidays.

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

<u>Services Fees:</u>	The City shall pay IPM the following fee for each week during which the Consultant or other IPM representatives provide Services per the Expected Services Performance Schedule to the City: \$2,600.00 per week, per Consultant or other IPM resource
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The Services and Expense Fees set forth above shall increase by five percent on September 1, 2014 and annually thereafter. Services Fees may be prorated by IPM as appropriate. If City expressly approves or requests that a Contractor work overtime hours, and if IPM is required to pay such Consultant overtime rates for such work, City hereby agrees that its rates for such Consultant with respect to such overtime hours shall be 1.5 times the Services Fees rates set forth above.

Term: This Schedule shall commence upon its stated Commencement Date and shall continue for a maximum of ninety (90) days or 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.



# Securely Signed Document

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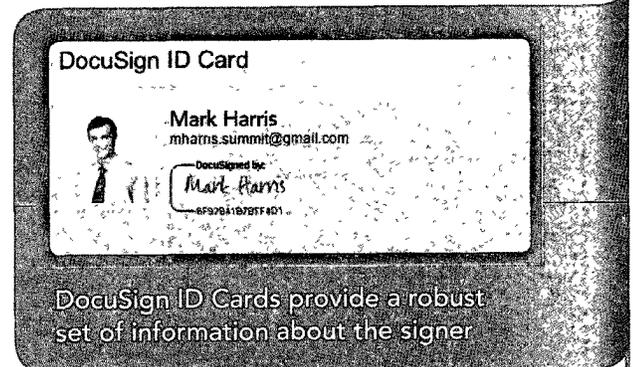
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