

**SERVICE CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**

Contract No: 2018024

THIS SERVICE CONTRACT (this "Contract"), is entered into this ____ day of _____, 2018, between the CITY OF BUCKEYE, an Arizona municipal corporation (the "CITY"), and _____, a(n) _____ corporation, (the "CONTRACTOR").

RECITALS

A. The City issued a Request for Proposals, 2018024 "Legal Publication" (the "RFP"), attached hereto as Exhibit A and incorporated herein by reference, seeking proposals from vendors for the printing and publishing of the City's legal notices and advertisements when the place of publication is not specified in the Arizona Revised Statutes and on as-needed basis as determined by the City.

B. The Contractor submitted a proposal in response to the RFP (the "Proposal"), attached hereto as Exhibit B and incorporated herein by reference, affirming it publishes and prints a newspaper in the City that satisfies the requirements of Arizona law to provide public printing and publishing of the City's notices and advertisements.

C. The City desires to enter into a Contract with the Contractor for the printing and publishing of the City's legal notices and advertisements when the place of publication is not specified in the Arizona Revised Statutes and on as-needed basis as determined by the City and as more fully described in Section 1.1.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor agree as follows:

1.0 SERVICES

1.1 SCOPE OF SERVICES

The Contractor shall print and publish the City's legal notices and advertisements when the place of publication of the notice is not specified in the Arizona Revised Statutes and on an as-needed basis as determined by the City (each, a "task;" collectively, the "Services"). Upon completion of each task, Contractor shall provide the City Clerk with a notarized affidavit of publication for each task within fourteen (14) days of publication and a "Tear Sheet" for each task verifying publication and specifying the actual run date(s). General scope requirements

and standards related to Services performed under this Contract are more fully described in the Scope of Work, attached hereto as Exhibit C and incorporated herein by this reference.

1.2 REPRESENTATIONS AND WARRANTIES

1.2.1 Circulation: Contractor represents and warrants it has _____ paid residential subscribers living within the territorial limits of the City.

1.2.2 Public Printing and Publishing Warranty: Contractor represents and warrants that it meets all of the requirements for public printing and publishing of the City's notices and advertisements as set forth in A.R.S. §§ 39-201 to -205, inclusive, and 39-221 and will continue to meet all of these requirements for the duration of the Contract Term as defined in Section 3.2 below. Specifically, Contractor represents and warrants it performs printing and publication activities.

1.2.3 Performance Warranty: The Contractor shall provide the Services to the satisfaction of the City and in accordance with the degree of care and skill newspapers in Arizona would exercise under similar conditions.

2.0 FEES AND PAYMENTS

2.1 FEE PROPOSAL

The City agrees to pay the Contractor for Services rendered in accordance with this Contract at the rates as set forth in the Fee Proposal, attached hereto as Exhibit D and incorporated herein by this reference.

2.2 PAYMENT APPROVAL

Contractor shall submit an invoice for each task to the City Clerk or their designated representatives (the "Contract Administrator"). No invoice shall be submitted until after the task has been completed without error and an affidavit and "Tear Sheet" has been provided to the City. Contractor shall maintain all books, papers, documents, accounting records and other evidence pertaining to the work billed and the costs incurred and make such materials available at all reasonable times during the Contract Term as defined in Section 3.2 below.

The City shall pay Contractor monthly based upon Services completed through the last day of the preceding calendar month and upon submission and approval of invoices. Each invoice statement shall include a record of the Services performed in sufficient detail to justify payment. Each task shall be subject to review and approval by the Contract Administrator to determine acceptable completion. All charges must be approved by the Contract Administrator prior to payment. The Contract Administrator reserves the exclusive right to determine whether the Services were performed correctly and the payment due to the Contractor on a monthly basis.

3.0 GENERAL TERMS AND CONDITIONS

3.1 CITY CONTRACT ADMINISTRATOR

The Contract Administrator shall provide the Contractor with the request to perform each task. The Contract Administrator shall oversee the performance of this Contract, assist the Contractor in contacting members of the City, audit invoices, and approve payments.

3.2 TERM OF CONTRACT

This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect for two years (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement.

At the discretion of the City, and with the agreement of the Contractor, this Contract may be extended beyond the Initial Term for a maximum of three (3) one (1) year periods, with no material changes to the terms and conditions if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Contract, the Contractor requests, in writing, to extend the Contract for an additional one-year term and (iii) the City approves the additional one-year term in writing, as evidenced by the City Manager's signature thereon. The Contractor's failure to seek a renewal of this Contract shall cause the Contract to terminate at the end of the then-current term of this Contract; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Contract. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

3.3 TERMINATION OF CONTRACT

The City, without liability, has the right to terminate or abandon any task that has not been performed by the Contractor.

3.3.1 Termination for Convenience: City and Contractor reserve the right to terminate this Contract or any part hereof for its sole convenience with thirty (30) days' written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Subcontractors to cease such work. As compensation in full for Services performed to the date of such termination, the Contractor shall receive a fee for the percentage of Services actually completed. This fee shall be in the amount to be mutually agreed upon by the Contractor and the City, based on the agreed Scope of Work and the value to the City of the Services completed. If there is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination. The City shall make this final payment within sixty (60) days after the Contractor has completed the last of the partially completed tasks. Contractor shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Contractor's suppliers or Subcontractors, which Contractor could reasonably have avoided.

3.3.2 Termination for Cause: City may also terminate this Contract or any part hereof with seven (7) days' written notice for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the material terms and conditions of this Contract. In the event of termination for cause, City shall not be liable to Contractor for any amount after the issuance of written notice, and Contractor shall be liable to City for any and all damages sustained by reason of the default that gave rise to the termination.

In the event Contractor is in violation of any Federal, State, County or City law, regulation or ordinance, including but not limited to the failure to meet the requirements of the law necessary to qualify as a newspaper available to be used as the official City newspaper, the City may terminate this Contract immediately upon giving written notice to the Contractor. Upon such termination, the Contractor shall cease any work and appraise the work it has completed and submit its appraisal to the City for evaluation.

If through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the City may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the City from the Contractor is determined.

3.3.3 Contract Subject to Appropriation: This Contract is subject to the provisions of A.R.S. § 42-17106. If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

3.3.4 Documents and Materials: Upon such termination or abandonment, the Contractor shall deliver to the City all publication or advertisements, entirely or partially completed, in any format, including but not limited to written or electronic media.

3.4 *COMPLETENESS AND ACCURACY*

The Contractor shall be responsible for the accuracy of the Services, including, but not limited to, publications, advertisements, etc., prepared or compiled pursuant to this Contract and shall correct, at its expense, all negligent errors or omissions therein which may be disclosed. The fact that the City has accepted or approved the Contractor's work shall in no way relieve the Contractor of any of its responsibilities.

3.5 *ATTORNEY'S FEES*

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, which shall be deemed to have accrued from the commencement of such action.

3.6 ASSIGNMENT

This Contract shall not be assigned. Any attempted assignment by Contractor in violation of this Section shall be a breach of this Contract by Contractor.

3.7 SUBCONTRACTORS

Services covered by this Contract shall not be subcontracted without the prior written consent of the Contract Administrator. For purposes of this Contract, the City approves Contractor's use of Western News & Info, Inc. for the printing and duplication of Contractor's newspaper.

During the performance of the Contract, the Contractor may engage such additional Subcontractors as may be required for the timely completion of this Contract, but the addition of any Subcontractors shall be subject to the prior written approval of the City. In no event, however, may Contractor engage Subcontractors to perform work that would preclude Contractor from satisfying the statutory requirements for legal public printing and publication of notices as set forth in Subsection 1.2.2 above or from complying with Contractor's representation and warranty as set forth in Subsection 1.2.2. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Contractor.

3.8 ALTERATIONS OR ADDITIONS TO SCOPE OF SERVICES

The total scope of Services to be performed in accordance with this Contract is set forth herein and in Exhibit C. Services that are not included in this Contract will be considered Additional Services. The Contractor shall not perform these Additional Services without written authorization from the City.

3.9 MODIFICATIONS; PROVISIONS REQUIRED BY LAW

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Each and every provision of law and any clause required by law to be in the Contract 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 Contract will promptly be physically amended to make such insertion or correction.

3.10 CONFLICT OF INTEREST

This Contract is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

3.11 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

3.12 TAXES

The fee listed in this Contract includes any and all taxes applicable to the activities hereunder. The City shall have no obligation to pay additional amounts for taxes of any type.

3.13 ADVERTISING

No advertising or publicity concerning the City using the Contractor's Services shall be undertaken without prior written approval of such advertising or publicity by the Contract Administrator.

3.14 NOTICE

All notices, communications or demands required to be given, pursuant to the terms of this Contract, shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this Section.

On behalf of the Contractor: Name
Street
City & Zip Code
Attention:
P: _____
F: _____

On behalf of the City: City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326
Attention: City Manager
P: (623) 349-6910
F: (623) 349-6351

With a copy to: Gust Rosenfeld, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attention:
P: (602) 257-7432
F: (602) 254-4878

Notices shall be deemed received on date delivered if delivered by hand and on the delivery date indicated on receipt if delivered by certified or registered mail.

3.15 INDEPENDENT CONTRACTOR

The services the Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these Services each year to the Internal Revenue Service ("I.R.S.") using Form 1099. City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax.

Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.16 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor, its successors, assigns and guarantors, shall indemnify, defend and hold harmless the City, each council member, its agents, representatives, officers, directors, officials and employees for, from and against all damages, losses, expenses, including, but not limited to, attorney's fees, court costs, and the cost of appellate proceedings, to the extent caused by or resulting from any negligent act, intentional misconduct, error, mistake or omission of Contractor in Services performed under this Contract, including, but not limited to, the negligent acts, intentional misconduct, errors, mistakes or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable including any injury or damages claimed by any of Contractor's and Subcontractor's employees.

Any settlement of claims shall fully release and discharge the indemnified parties from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. It is agreed that the Contractor's indemnity obligations under this Contract are triggered only if Contractor has notice of the allegations, demands, proceedings, suits, actions, claims, damages, losses or expenses contemplated above.

3.17 E-VERIFY REQUIREMENTS

To the extent applicable under A.R.S. § 41-4401, the Contractor and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor's or its Subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the City. The City retains the legal right to randomly inspect the papers and records of the Contractor or Subcontractor employee who work on the Contract to ensure that the Contractor and its Subcontractors are complying with the above-mentioned warranty. The Contractor and its Subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

3.18 NON-EXCLUSIVE CONTRACT

This Contract is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like services from another source when lawful or necessary.

3.19 GENERAL PROVISIONS

This Contract, including the attached exhibits, constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Contract may be executed in one or more counterparts,

and each executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original. This Contract shall be governed and interpreted according to the laws of the State of Arizona and suit pertaining to this Contract may be brought only in courts in Maricopa County, Arizona. In performing the work required hereunder, Contractor shall comply with all applicable laws, ordinances and codes of Federal, State and local governments, in effect during this Contract. If any term or provision of this Contract is found to be illegal or unenforceable by a Court of competent jurisdiction, then, notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each party has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

THEREFORE, the City of Buckeye by its Interim City Manager has hereunto subscribed his name.

CITY OF BUCKEYE

By: _____

Roger Klingler
Interim City Manager

By: _____

Its: _____

EXHIBIT A
TO
SERVICE CONTRACT
BETWEEN
THE CITY OF BUCKEYE
AND

[RFP]

See following pages