

**AGREEMENT BETWEEN THE CITY OF APACHE JUNCTION
AND INDEPENDENT NEWS MEDIA USA, INC., FOR PRODUCTION,
DESIGN, PRINTING AND DISTRIBUTION OF THE CITIZEN
MAGAZINE**

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, by and between the CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation ("City"), and the INDEPENDENT NEWS MEDIA USA, INC., a division of Independent Newspapers USA Inc., ("Publisher"), both of which may be hereinafter referred to collectively as the "Parties" or "Party", for the Citizen magazine production, design, printing, and distribution services.

RECITALS

A. City desires to retain Publisher to assist in the production, design, printing, and distribution of the City's Parks & Recreation Citizen Magazine (the "Magazine") and to make payment for the same 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.

B. The open market procedures set forth in the Apache Junction City Code have been satisfied to the extent they apply.

C. The Parties have set forth below contemplated services Publisher will provide City, including payment terms for such services and products.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals noted above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **PUBLISHER'S DUTIES:** Publisher agrees to perform the professional services detailed in Exhibit A.

2. **COMPENSATION:** In accordance with the terms and conditions of this Agreement, Publisher agrees to bear all costs and expenses of publishing, design, printing, and distribution of the magazine. The City shall not be liable for any expenses or obligations incurred in the publishing of the booklet other than promoting and distributing the additional copies printed that are not distributed in the Apache Junction/Gold Canyon Independent.

3. **CONSIDERATION:** In exchange for producing, designing, printing and distributing the Magazine, Publisher shall retain all revenue generated by advertising in the Magazine sold by Publisher.

4. **TERM:** This Agreement shall be effective beginning August 1, 2019 through July 31, 2022 ("Initial Term") and shall remain in full force and effect until publication is complete, unless otherwise terminated as set forth herein. Following the Initial Term, the Parties may renew this Agreement every twelve (12) months three additional consecutive times.

5. **PUBLISHER BILLING:** The City shall have the right to purchase additional copies of the Magazine, over and above 24,000 published at a rate of Five Hundred Dollars (\$500.00) per One Thousand (1,000) copies. Publisher shall bill City on a time and expense basis. City shall pay such billings within thirty (30) calendar days of the date of receipt.

6. **CITY'S RIGHT TO REJECT ADS:** The City shall have the right to reject any advertisements that the City deems unfit, sold by the Publisher for purpose of printing in the Magazine.

7. **CITY'S STANDARD OF PERFORMANCE:** City shall furnish Publisher with all data, information and other supporting services specified in Exhibit A.

8. **PUBLISHER'S STANDARD OF PERFORMANCE:** While performing the services, Publisher shall exercise the reasonable professional care and skill customarily exercised by reputable members of Publisher's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable due diligence and best judgment while exercising its professional skill and expertise. Publisher shall be responsible for all errors and omissions Publisher commits in the performance of this Agreement.

9. **NOTICES:** All notices to the 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: Liz Langenbach
Parks & Recreation Director
City of Apache Junction
300 East Superstition Boulevard
Apache Junction, AZ 85119

If to Publisher: Charlene Bison
Publisher
Apache Junction Independent
2066 W. Apache Trail, Ste. 110
Apache Junction, AZ 85120

10. RECORDS: Records of Publisher's printing costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Publisher 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. Any and all requests are to be made via email at cbisson@newszap.com.

11. INSURANCE: Publisher, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.

Publisher's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Publisher's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Publisher shall be solely responsible for the deductible and/or self-retention and City, at its option, may require Publisher to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Publisher of any deficiencies in such policies and endorsements, and such receipt shall not relieve Publisher from, or be deemed a waiver of, City's right to insist on strict fulfillment of Publisher's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its agents, officers, officials and employees as Additional Insureds.

REQUIRED COVERAGE

Commercial General Liability

Publisher shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or the equivalent thereof.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, or the equivalent thereof, and shall include coverage for Publisher's operations and products and completed operations.

If required by this Agreement, if Publisher sublets any part of the work, services or operations, Publisher shall purchase and maintain, at all times during prosecution of the work, services or operations under this Agreement, an Owner and Publisher's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Publisher's work, service or operations under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Publisher's Commercial General Liability insurance.

Automobile Liability

Publisher shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Publisher's owned, hired, and non-owned vehicles assigned to or used in performance of Publisher's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or the equivalent thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90

endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

Publisher shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Publisher's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

By execution of this Agreement, Publisher certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23-900 *et seq.* which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply with such provisions before commencing the performance of the work of this Agreement."

If Publisher has no employees for whom workers' compensation insurance is required, Publisher shall submit a declaration or affidavit to City so stating and covenanting to obtain such insurance if and when Publisher employs any employees subject to coverage.

In case any work is subcontracted, Publisher will require subcontractors to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Publisher.

Certificates of Insurance

Prior to commencing work or services under this Agreement, Publisher shall furnish City with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Publisher's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction City Attorney's Office, shall comply with the terms of this Agreement, and shall be issued and delivered to City Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ 85119.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Publisher's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of City's Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the City Attorney) evidencing the coverage required by this section shall be filed with the City and shall include the City as an additional insured. The policy or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

"Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that the City of Apache Junction and its officers and employees are added as additional insureds under this policy."

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City.

12. APPLICABLE 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.

13. FORCE MAJEURE: Neither City nor Publisher, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting

the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subcontractors, vendors or investors desired by Publisher in connection with the obligations under this Agreement. Publisher agrees that Publisher alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

14. **TERMINATION:** This Agreement may be terminated by either Party for any reason upon fifteen (15) calendar days' written notice. If this Agreement is terminated, Publisher shall be paid for services performed to the date of receipt of such termination notice. Upon termination, Publisher shall deliver to City all work in any state of completion at the date of effective Termination.

15. **INDEMNIFICATION:** To the fullest extent permitted by law, Publisher shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Publisher, its agents, employees, or any tier of Publisher's subcontractors in the performance of this Agreement. Publisher's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by Publisher's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Publisher, any tier of Publisher's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Publisher may be legally liable.

16. **TAXES:** Publisher shall pay all license, sales, consumer, transaction privilege, use and other similar taxes for services provided by Publisher which are legally enacted at the time the obligations under this Agreement are performed.

17. PERMITS & FEES: Unless otherwise provided in this Agreement, Publisher shall secure and pay for all applicable permits, government fees, licenses and inspections necessary for the proper execution and completion of services which are customarily secured after execution of the Agreement. Publisher shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the obligations. Publisher represents and warrants that any license necessary to perform the services under this Agreement is current and valid. Publisher understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Publisher agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Publisher also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by all applicable laws. If there are taxable activities, a business license shall be converted to a transaction privilege tax license by the Publisher through the City of Apache Junction City Clerk's Office. Further, Publisher agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

18. RECORDS: Records of Publisher's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Publisher 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. All of the files, reports, documents, information as well as all data prepared in Autocad or other electronic drawing or text files or assembled in any other form by Publisher under this Agreement, shall be and shall remain the property of City and shall be forwarded to City at any time City requires such papers and files.

19. RIGHT OF CITY TO CONTRACT WITH OTHERS: Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Publisher.

20. INDEPENDENT CONTRACTOR: City and Publisher agree and understand that the relationship between both Parties is that of an independent contractor.

21. WAIVER OF TERMS AND CONDITIONS: The failure of City or Publisher 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.

22. COMPLIANCE WITH FEDERAL AND STATE LAWS: Publisher understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Publisher hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Publisher further warrants that after hiring an employee, Publisher will verify the employment eligibility of the employee through the E-Verify program. If Publisher uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Publisher is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Publisher shall not be deemed in material breach of this Agreement if the Publisher and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Publisher or subcontractor employee who works under this Agreement to ensure that the Publisher or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

23. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Publisher 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.

24. SEVERABILITY: City and Publisher each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this

Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

25. **SUCCESSORS & ASSIGNS:** City and Publisher each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in this Agreement. Neither Party to the Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall Publisher assign any monies due or to become due to or to become due to it without the previous written consent of City.

26. **ACCURACY OF WORK:** Acceptance of services or work by City shall not relieve Publisher of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities. Publisher shall make all necessary revisions or corrections resulting from errors and omissions on the part of Publisher without additional compensation.

27. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

28. **PROHIBITION TO CONTRACT WITH PUBLISHERS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL:** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Publisher who engage in boycotts of the State of Israel. Should Publisher under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Publisher to monetary damages, including but not limited to, consequential and liquidated damages.

29. **CONFLICTS OF INTEREST:** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, Publisher and City have executed this Agreement as of the date first set forth above.

PUBLISHER:

INDEPENDENT NEWS MEDIA USA, INC.

Charlene Bixon

By: Charlene Bixon

Title: Publisher

CITY:

**CITY OF APACHE JUNCTION,
an Arizona municipal corporation**

By: Bryant Powell

Title: City Manager

APPROVED AS TO FORM:

[Signature] 7.1.19

**Richard J. Stern
City Attorney**

EXHIBIT A

PUBLISHER'S DUTIES

Services to be performed: Production, Design, Printing and Distribution

Design and layout must meet or exceed the quality of the following parameters and all layout of text and graphics must be included in each issue from any copy received.

- 1. Booklet size shall be at least 8" x 10.5", stapled and trimmed.**
- 2. Booklet shall be printed on bright newsprint with full processed color available on every page.**
- 3. There shall be a minimum of 24,000 copies, with approximately 20,000 to be distributed in a local newspaper at the expense of the publisher, circulated to Apache Junction residents and those residing in unincorporated areas, and 4,000 copies to be delivered the Parks and Recreation office at 1001 N. Idaho Road, Apache Junction, AZ 85119.**
- 4. There shall be three issues per year in April, August, and December.**
- 5. There shall be an on-line copy of the booklet available to readers at no additional charge.**
- 6. There shall be a minimum of 16 pages printed for each issue with a 60% editorial to 40% advertising ratio.**
- 7. The City has the right to review and reject all advertising.**
- 8. The City of Apache Junction will maintain all intellectual property rights to the finished product.**