



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

26

2. Council Meeting Date:

March 22, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: March 8, 2007

THROUGH: CITY MANAGER

4. Requesting Department: Community Services

5. SUBJECT: Award contract (Bid No. CS7-966-2369) for printing/distribution of the Break Time Magazine to Century Graphics in an amount not to exceed \$60,000.

6. RECOMMENDATION: Recommend award of contract (Bid No. CS7-966-2369) for printing/distribution of the Break Time Magazine to Century Graphics in an amount not to exceed \$60,000.

7. HISTORICAL BACKGROUND/DISCUSSION: The Break Time Magazine contains information about the recreational and cultural programs, classes and events offered to the general public by the Community Services Department. Effective January 2007, distribution of the magazine was changed to a free subscription based process, posting on the city's website and hard copies being made available at key city facilities. Incorporating the subscription based distribution process allowed staff to reduce the number of issues printed per quarter in previous years (80,000), and use a portion of those savings to offset the cost increase that would occur from adding pages as a result of incorporating programs, classes and events from new facilities currently under construction. The net annual savings of this contract over previous contracts is \$20,000.

8. EVALUATION PROCESS: The Invitation for Bid was advertised with 135 registered vendors being notified. A total of eight (8) bids were received with Century Graphics being the lowest, most responsive bidder.

9. FINANCIAL IMPLICATIONS: Funds for Design, Printing and Distribution of the Break Time Magazine will be from General Fund, Recreation Cost Center Printing Account, 101.4550.0000.5309.

10. PROPOSED MOTION: Move to award the contract (Bid No. CS7-966-2369) for the Break Time Magazine to Century Graphics in an amount not to exceed \$60,000, per staff recommendation.

APPROVALS

11. Requesting Department

Barbara Young

Barbara Young, Recreation Manager

12. Department Head

Mark M. Eynatten

Mark M. Eynatten

13. Procurement Officer

Glenda Shackelford

Glenda Shackelford, CPPB

14. City Manager

W. Mark Pentz

W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT
PRINTING OF BREAKTIME MAGAZINE
CONTRACT NO.: CS7-966-2369**

THIS AGREEMENT is made and entered into this [REDACTED] day of [REDACTED], 200[REDACTED], by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and CENTURY GRAPHICS, a Corporation in the State of Arizona, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

1.1. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Community Services Marketing Assistant /designee (Contract Administrator), to provide the services required by this Agreement.

1.2. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of an authorized City Purchase Order, Contract Release Order, or use of a City Procurement Card.

1.3. **Subcontractors.** During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

2. **SCOPE OF WORK:** CONTRACTOR shall provide printing services all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference and as set forth in the Scope of Work and details included therein.

2.1. **Product Discontinuance (Categories):** In the event that a required paper is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new paper and provide the following:

A formal announcement from the manufacturer that the paper has been discontinued. CONTRACTOR must get prior approval from CITY to substitute paper.

Documentation from the manufacturer that names the replacement paper.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued paper.

Documentation confirming that the price for the replacement is the same as or less than the discontinued paper.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement paper.

2.2. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.

- 2.3. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws.
3. **ACCEPTANCE AND DOCUMENTATION:** All printed material is subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR'S risk and may be returned to CONTRACTOR. If so returned, the cost of the transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. All replacement printed material must be received by CITY within seven (7) days of initial notification. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
- 3.3. **Delivery.** Delivery shall be as per Exhibit A attached.
4. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed **Sixty Thousand Dollars** (\$60,000) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
- 4.1. **Pricing.** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 4.2. **Payment.** A separate invoice shall be issued for each shipment of printed material, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, contract number, line item number, and serial number if applicable. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.
- 4.3. **Delivery.** All prices are F.O.B. destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 4.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 4.5. **Taxes.** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of the CONTRACTOR'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONTRACTOR.

- 4.6. **Tax Credits or Exemptions.** When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the City.
- 4.7. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
5. **TERM:** The contract term is for a one-year period subject to mutually agreed upon additional successive periods of a maximum twelve months per extension with a maximum aggregate including all extensions not to exceed five (5) years. Additionally, the contract may be extended unilaterally for a period of thirty-one days or a portion thereof.
6. **USE OF THIS CONTRACT:**
- 6.1 **Emergency Purchases:** CITY reserves the right to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
- 6.2 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
7. **CITY'S CONTRACTUAL REMEDIES:**
- 7.1. **Right to Assurance.** If the City in good faith has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
- 7.2. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.3. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.4. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.
8. **TERMINATION:**
- 8.1. **Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof 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 performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the **Management Services Director** shall determine the percentage of work performed for each

task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

- 8.2. **Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.
- 8.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.
- 8.4. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 8.5. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.6. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.
- 8.7. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.8. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **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.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third

party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.

- 10.1. **Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
- 10.2. **Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
- 10.3. **CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
- 10.4. **Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
- 10.5. **Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.
 - A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
 - B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
 - C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the

Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.

- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.

L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.

M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. **INSURANCE:**

12.1. **Insurance Representations and Requirements:**

- A. CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. 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 is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR may be withheld until these requirements have been met; or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONTRACTOR.

- E. All insurance policies, except Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F. CONTRACTOR'S insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR. CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/Designee.
- I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

12.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
- B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D. REQUIRED CITY reserves the right to request and to receive, within 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 CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

12.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

12.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONTRACTOR'S operations and products, and completed operations.

12.5. General Liability - Minimum Coverage Limits

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent CONTRACTORS, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

12.6. Automobile Liability

CONTRACTOR 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 any owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

12.7. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'S employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

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

13. NOTICES: All notices or demands required to be given pursuant to the terms of this Agreement 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 paragraph.

In the case of the CITY

Contract Administrator:	<u>Community Services</u>
Contact:	<u>Erica Ramos-Guevara</u>
Mailing Address:	<u>PO Box 4008 – MS 501</u>
Physical Address:	<u>125 E Commonwealth</u>
City, State, Zip	<u>Chandler AZ 85244</u>
Phone:	<u>480-782-2910</u>
FAX:	<u>480-782-2713</u>

In the case of the CONTRACTOR

Firm Name:	<u>Century Graphics</u>
Contact:	<u>Jim Knight</u>
Address:	<u>2960 Grand Ave</u>
City, State, Zip	<u>Phoenix AZ 85017</u>
Phone:	<u>602-271-4060</u>
FAX:	<u>602-271-4064</u>
	<u>Email: jim@cgiiaz.com</u>

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.

14. CONFLICT OF INTEREST:

14.1. No Kickback. CONTRACTOR 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 any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

14.2. Kickback Termination. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a

CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

- 14.3. **No Conflict:** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
15. **GENERAL TERMS:**
- 15.1. **Entire Agreement.** This Agreement, including Exhibits A and B attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 15.2. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.3. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.4. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
- 15.5. **Independent CONTRACTOR.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.6. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____ 20_____.

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: Barbara A. Koyt - President
Signature

ATTEST:

ATTEST: If Corporation

SEAL

City Clerk
Approved as to form:

Barbara A. Koyt
Secretary

City Attorney *J*

2/28/07

Samara J. McTell - witness

**EXHIBIT A
TECHNICAL SPECIFICATIONS**

CONTRACTOR shall provide specific graphic design, layout, printing, distribution, Internet and marketing support services for the quarterly magazine, *Breaktime*. The primary content of the magazine is a catalogue of classes, programs and services offered by CITY. CONTRACTOR shall provide the following services and comply with the following specifications:

PRODUCTION SERVICES: DESIGN, LAYOUT AND PRINTING

Frequency:

Published quarterly with issues distributed in late January, late April, late July and late October.

Quantities:

The base quantity shall be 20,000.

CITY has recently changed its distribution method from a saturation mailing of all Chandler households, to mailing *Breaktime* only to subscribers. The new subscription process allows CITY residents to subscribe at any time during the year, which will mean a slight increase in the direct mail quantity for each issue. The number of extra copies printed and delivered to CITY for customer pick-up is expected to vary slightly, depending on the number of subscribers and the number left over after each *Breaktime* cycle.

Number of Pages:

Page counts may vary by issue as outlined below (counts include the 4-page glossy cover).

<u>Issue</u>	<u>Minimum # Pages</u>	<u>Maximum # Pages</u>
Summer	76	84
Fall	76	84
Winter	76	92
Spring	76	92

Design/Layout:

Some design and layout work may be outsourced to CONTRACTOR with this contract and shall be based upon an hourly rate. The amount of design and layout support provided by CONTRACTOR may vary with each issue and shall be determined by CITY. Design and layout done by CONTRACTOR shall meet or exceed the standard of quality of the supplied sample. Photos and non-text images may be provided by CITY or by CONTRACTOR and included in the layout at no additional cost to CITY. All photos and art shall be approved by CITY's Contract Administrator. Any clip art images shall be in keeping with the overall design of the magazine, with a preference for clean, bold art.

CONTRACTOR shall be able to support the following desktop publishing software:

Adobe InDesign CS2
QuarkXPress 6.1 or higher

All documents, including but not limited to, data compilations, boards, and photos that are prepared in the performance of this contract are to be and shall remain the property of CITY.

Type Style:

Per sample brochure, or with approval of CITY new fonts and font sizes may be used.

Paper Stock:

Cover Pages: 60# Glossy
Inside: 30# Newsprint

Size:

CONTRACTOR shall provide a trimmed magazine not to exceed 8 1/8" x 10 3/4". As an option, CITY may request a smaller trim size to reduce paper cost increases.

Weight:

Not to exceed 3.3067 oz per magazine.

Ink:

Text pages: black + 1 PMS color on all pages (excluding cover).
Front & Back Cover: four colors composite (process colors),
Inside Cover: black + 1 PMS color

Bleeds:

Cover: Three-sided bleed
Inside Pages: One-sided bleed

Proofs:

CONTRACTOR shall provide proofs at the following production stages:

- 1) Initial proof
- 2) Second proof
- 3) Third proof
- 4) Fourth Proof
- 5) Blueline/color key for front/back covers
- 6) Revised blueline/color key if needed*

***If revisions are required as a result of missed corrections by CONTRACTOR or CONTRACTOR errors, the revised proof shall be provided at CONTRACTOR expense. If the revisions are due to last-minute changes on the part of CITY, CITY would expect to pay for the revised materials.**

Finishing/Binding:

Saddle-stitched (two staples & trim).

PRODUCTION SCHEDULE

CITY will establish production timelines and deadlines for delivery of the magazines to the post office. CITY will notify CONTRACTOR of these timelines and deadlines a minimum of ten weeks in advance of the desired post office delivery date for each issue. At this time, CITY will also notify CONTRACTOR of the anticipated amount of design and layout hours that may be required of CONTRACTOR for that particular issue.

Production Milestones:

If CITY chooses to utilize CONTRACTOR for desktop publishing services, complete production schedule cannot exceed eight weeks from the time CITY delivers the raw materials to delivery of the printed publication. The production schedule must allow CITY staff at least four days for review of the initial proofs, three days for review of the second proofs, three days for review of the third proofs, three days for review of the fourth proof, and two days for review of the blue/line/color key. These 15-days shall be weekdays and shall exclude CITY-observed holidays.

The timeline established by CITY will specify the dates for the following key production steps:

1. Initial content delivery to CONTRACTOR -- CONTRACTOR shall have a minimum of five (5) days to provide the 1st proof to CITY.
2. 1st proof delivered to CITY -- CITY will have a minimum of four (4) days from delivery to pickup.
3. CONTRACTOR shall have a maximum of four (4) days to make corrections and additions and provide 2nd proof to CITY.
4. 2nd proof delivered to CITY -- CITY will have a minimum of three (3) days from delivery to pickup.
5. CONTRACTOR shall have a maximum of three (3) days to make corrections and additions and provide 3rd proof to CITY.
6. 3rd proof delivered to CITY -- CITY will have a minimum of three (3) days from delivery to pickup.
7. CONTRACTOR shall have a maximum of three (3) days to make corrections and additions and provide 4th proof to CITY.
8. 4th proof delivered to CITY -- CITY will have a minimum of three (3) days from delivery to pickup.
9. CONTRACTOR shall have a maximum of two (2) days to make corrections and provide Blue Line proof to CITY.
10. Blue Line delivered to CITY -- CITY will have a minimum of two (2) days from delivery to pickup.
11. CONTRACTOR shall have a minimum of ten (10) days to print, label, sort and delivery final publication to CITY Contract Administrator and Chandler Post Office*

***Anticipated delivery schedules - due at Post Offices:**

<u>Summer '07</u>	<u>Fall '07</u>	<u>Winter '07</u>	<u>Spring '07</u>
April 25, 2007	Late July 2007	Late October 2007	Late January 2008

For informational purposes only, a possible production schedule for the Summer 2007 issue is as follows:

- | | |
|---|-----------------------------|
| 1. Initial content delivery to Contract Administrator | Feb. 27, 2006 |
| 2. 1 st Proof Review by Contract Administrator | March 12-14, 2007 |
| 3. 2 nd Proof Review by Contract Administrator | March 20-22, 2007 |
| 4. 3 rd Proof Review by Contract Administrator | March 28-30, 2007 |
| 5. 4 th Proof Review by Contract Administrator | April 4-6, 2007 |
| 6. Camera-ready copy to CONTRACTOR | April 8, 2007 |
| 7. Blue Line -- Delivery to CITY | April 10, 2007 |
| 8. Blue Line -- Pick Up from CITY | April 11, 2007 |
| 9. Delivery to CITY Contract Administrator | On or before April 25, 2007 |
| 10. Delivery to Post Office* | On or before April 25, 2007 |

Proof Delivery & Pick-Up:

Pick-up and delivery of all proofs will be provided by CONTRACTOR to and from:
Chandler Community Services Department
Contract Administrator
Administrative Offices, 2nd Floor
125 E. Commonwealth Ave.
Chandler, AZ 85225

Pre-sort and Delivery to Post Office and CITY:

If CONTRACTOR uses separate pre-sort services, CONTRACTOR shall be responsible for delivery to pre-sorter.

CONTRACTOR shall deliver the magazine to the Post Office and CITY according to the schedule and specified locations.

CONTRACTOR shall be responsible for labeling and pre-sorting CITY's magazine to obtain the lowest postal rate possible. In the bulk mail case, this is destination delivery/carrier route pre-sort in walk sequence, which requires delivery of the magazine first to the main post office in CITY and then to appropriate substations.

BUNDLING & DISTRIBUTION

Below are the requirements for addressing, bundling, sorting, and delivery.

Addressing & Sorting:

Approximately 2,000-5,000 copies shall be direct mailed to customers who are on an address database maintained and provided on CD by CITY. CONTRACTOR shall be responsible for pre-sorting and labeling the magazines in accordance with U.S. Postal Services requirements to achieve the minimum rates for carrier route bulk sequence mailing.

Bundling:

The magazines for mail delivery shall be bundled in accordance with postal stipulations. The magazines to be delivered to CITY shall be boxed in quantities of approximately 100.

Delivery:

The actual distribution breakdown may vary slightly by issue depending on subscriber trends. The magazines to be mailed shall be delivered to the main Chandler Post Office at 101 N. Colorado St., unless deliveries to the additional two Chandler substations is requested by the Chandler Postmaster. The remaining magazines shall be delivered in boxes to one to three CITY locations to be specified by Contract Administrator.

Postage Costs:

CITY will be responsible for the mailing costs at the prevailing bulk mailing rates. These funds will be deposited in trust at the U.S. Post Office, 101 N. Colorado St., Chandler, AZ prior to mailing.

CONTRACTOR shall be responsible for pre-sorting and labeling each bundle of magazines in accordance with U.S. Postal Service Domestic Mail Manual requirements to achieve the minimum individual city bulk mailing rates. **CONTRACTOR shall pre-sort the magazine per carrier route bulk sequence.**

**EXHIBIT B
PRICING**

Printing:

Presort and Delivery for a 76-page publication (including 4 page, 4 color, glossy cover) in a quantity of 20,000:

20,000 copies / 76-page brochure \$ 8,025.00 TOTAL

OPTIONAL SERVICES/CHARGES

On occasion, CITY may need to order additional products or services beyond the scope indicated within the "Invitation for Bid." Provide charges for additional services to be ordered at the discretion of CITY:

Any typesetting, layout and graphic design work at the request of CITY:

\$ 45.00 per hour

Printing, presort and delivery costs per each additional 1,000 copies of a *Breaktime* magazine beyond the designated quarterly quantity (20,000):

\$ 296.00 per 1,000

Cost for adding eight (8) inside pages to the magazine at 20,000 copies:

\$ 104.00* for 20,000

***Total for 80pg & cover only**

Cost for adding eight (8) inside pages to the magazine per each additional 1,000 copies:

\$ 5.20 per 1,000

Add'l cost to inkjet and bulk mail: \$65.00 per 1,000 + \$50.00 for drop for qty's up to 5,000

\$60.00 per 1,000 + \$50.00 for drop for qty's up to 5,000