

JOB RECRUITMENT ADVERTISING SERVICES CONTRACT

THIS CONTRACT is made this 26th day of February, 2019 by and between **THE BALTIMORE SUN COMPANY, LLC** and the **MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT**.

IN CONSIDERATION of the premises and the covenants herein contained, the parties agree as follows:

Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Agency” means the unit of Maryland State government procuring Services (as defined in section 2.1, below) through this Contract, including but not limited to the Department.
- 1.2 “Agency Coordinator” means the respective designated Agency representative and single point of contact responsible for coordinating Agency Services with the Contractor.
- 1.3 “Contract” means this Contract for job recruitment advertising services.
- 1.4 “Contractor” means the Baltimore Sun Company, LLC, whose principal business address is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 and address in the State is 501 N. Calvert St., P. O. Box 1377, Baltimore, Maryland 21278-0001.
- 1.5 “Contract Manager” means the manager designated by the Department, who is Andrea Lockett. The Department may change the Contract Manager at any time by written notice.
- 1.6 “Department” means the Maryland Department of Budget and Management.
- 1.7 “Procurement Officer” means the officer designated by the Department, who is Gregory Dennis. The Department may change the Procurement Officer at any time by written notice.
- 1.8 “State” means the State of Maryland.

2. Scope of Work

- 2.1 The Contractor shall:
 - a. Provide and place job recruiting advertising notices in a uniform manner in the Baltimore Sun Company publications best suited to reach the targeted audience, for Agencies; and
 - b. Provide dedicated recruitment advertising sales representatives for Agencies. The Contractor will provide the Department with a list of all Contractor sales representatives and update the list each time it changes. If an Agency already has a dedicated representative, the Agency will continue that working relationship. (The Department will be responsible for informing Agencies of the new advertising procedures and contact information in order to receive the reduced advertising rate); and

- c. Manage each Agency relationship and recruitment strategy on an individual level to find the best fitting modular size for the particular advertisement; and
- d. Separately invoice at the established reduced modular ad unit and display advertising rates each Agency that submits a job ad; and
- e. Submit monthly aggregate billing statements to the Department in an Excel spreadsheet itemizing usage by all Agencies to enable the Department to monitor usage and spending levels by Agency and in the aggregate; and
- f. Provide to Agencies the option to purchase a 30-day Job Network online job posting and Social Boost Add-On at \$325 when bundled with a print advertisement.
- g. Provide to Agencies the option to purchase The Capital Gazette ACG Jobs Sun- Wed Package and separately invoice at the established reduced modular ad unit and display advertising rates each Agency that submits a job ad.
- h. Provide to Agencies the option to purchase Carroll County Times Daily Display and separately invoice at the established reduced modular ad unit and display advertising rates each Agency that submits a job ad.

Sections 2.1 (a) through (h) are collectively referred to herein as "Services."

2.2 The advertising recruitment Services shall be provided in accordance with this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference:

- Exhibit A – State Bid/Proposal Affidavit Addendum;
- Exhibit B – State Contract Affidavit Addendum;
- Exhibit C – Living Wage Affidavit Agreement; and
- Exhibit D – Advertising Dollar Volume Agreement.

If there are any inconsistencies or conflicts between this Contract and Exhibits A through D, the terms of this Contract shall control. If there is any conflict among the Exhibits, the order of precedence among the Exhibits shall determine the prevailing provision.

2.3 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor shall assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.4 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by Department as described in COMAR Title 21, are obtained.

3. Time for Performance

The Contractor shall begin providing Services under this Contract following any required prior approvals, including approval by the Board of Public Works, if such approval is required, beginning on March 1, 2019, and shall continue to provide Services until February 29, 2020, unless terminated earlier as provided in this Contract. Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

In consideration of the satisfactory performance of the work set forth in this Contract, the individual Agencies receiving Services shall pay the Contractor in accordance with the terms of this Contract and at the rates specified below in Sections 4.1 through 4.4 below.

4.1 On the presumption that Agencies will collectively place \$75,000 worth of job advertising recruitment Services within the one-year contract period, the following guaranteed advertising rates shall be charged to all State Agencies from the beginning of the Contract:

A. Sunday Modular Ad Units are as follows:

Small – 1 column;	2.29" wide, 0.30" deep	\$135.00
Medium – 1 column;	2.29" wide, 0.60" deep	\$247.50
Large – 1 column;	2.29" wide, 0.95" deep	\$450.00
Extra Large – 1 column;	2.29" wide, 1.95" deep	\$825.00

B. Sunday Display Advertising Rates are as follows:

1/32 – 1 column;	2.29" wide, 2.27" deep	\$ 975.00
1/16 – 1 column;	2.29" wide, 4.64" deep	\$1,500.00
1/8 – 1 column;	4.75" wide, 4.64" deep	\$2,400.00
1/4 Vertical – 1 column;	4.75" wide, 9.35" deep	\$3,825.00
1/4 Horizontal – 2 columns;	9.66" wide, 4.64" deep	\$3,825.00
Half Page – 4 columns;	9.66" wide, 9.66" deep	\$6,112.50
Full Page – 4 columns;	10.00" wide, 20.45" deep	\$9,750.00

C. Wednesday Modular Ad Units are as follows:

Small – 1 column;	2.29" wide, 0.30" deep	\$108.00
Medium – 1 column;	2.29" wide, 0.60" deep	\$198.00
Large – 1 column;	2.29" wide, 0.95" deep	\$360.00
Extra Large – 1 column;	2.29" wide, 1.95" deep	\$660.00

D. Wednesday Display Advertising Rates are as follows:

1/32 – 1 column;	2.29" wide, 2.27" deep	\$ 780.00
1/16 – 1 column;	2.29" wide, 4.64" deep	\$1,200.00
1/8 – 1 column;	4.75" wide, 4.64" deep	\$1,920.00

1/4 Vertical – 1 column;	4.75" wide, 9.35" deep	\$3,060.00
1/4 Horizontal – 2 columns;	9.66" wide, 4.64" deep	\$3,060.00
Half Page – 4 columns;	9.66" wide, 9.66" deep	\$4,890.00
Full Page – 4 columns;	10.00" wide, 20.45" deep	\$7,800.00

E. If an Agency purchases multiple days of job advertising recruitment services, the price for each day of advertising will be additionally discounted as follows: 2 days = 10% additional off the rates; 3 days = 15% additional; or 4 days = 25% additional off the rates listed above in Sections 4.1A through 4.1D.

4.2 At its option, an Agency may purchase at the rates listed below:

Capital Gazette. ACG Jobs Sun- Wed Package:

1x Sunday The Capital	Sunday Capital	\$34.29/in
1x Wed The Capital	Daily Capital	\$30.86/in
1x Wed Maryland Gazette	MD Gaz	\$28.44/in
1x Thurs. Bowie Blade	Bowie	\$27.90/in
1x Thurs. Crofton Gazette	Crofton	\$13.95/in

4.3 At its option, an Agency may purchase at the rates listed below:

A. Carroll County Times Daily Display Advertising rates are as follows:

1x2 – 1 column;	1.29" wide, 2.00" deep	\$ 35.00
1x3 – 1 column;	1.29" wide, 3.00" deep	\$ 52.00
1x4 – 1 column;	1.29" wide, 4.00" deep	\$ 69.00
1x5 – 1 column;	1.29" wide, 5.00" deep	\$ 86.00
2x3 – 2 column;	2.31" wide, 3.00" deep	\$ 104.00
2x4 – 2 column;	2.31" wide, 4.00" deep	\$ 138.00
2x5 – 2 column;	2.31" wide, 5.00" deep	\$ 173.00
3x3 – 3 column;	3.51" wide, 3.00" deep	\$ 155.00
3x4 – 3 column;	3.51" wide, 4.00" deep	\$ 207.00
3x5 – 3 column;	3.51" wide, 5.00" deep	\$ 259.00

B. Carroll County Times Sunday Display Advertising rates are as follows:

1x2 – 1 column;	1.29" wide, 2.00" deep	\$ 42.00
1x3 – 1 column;	1.29" wide, 3.00" deep	\$ 63.00
1x4 – 1 column;	1.29" wide, 4.00" deep	\$ 84.00
1x5 – 1 column;	1.29" wide, 5.00" deep	\$ 105.00
2x3 – 2 column;	2.31" wide, 3.00" deep	\$ 126.00
2x4 – 2 column;	2.31" wide, 4.00" deep	\$ 168.00
2x5 – 2 column;	2.31" wide, 5.00" deep	\$ 210.00
3x3 – 3 column;	3.51" wide, 3.00" deep	\$ 189.00
3x4 – 3 column;	3.51" wide, 4.00" deep	\$ 252.00
3x5 – 3 column;	3.51" wide, 5.00" deep	\$ 315.00

4.4 Optional: The Job Network 30 day posting and Social Boost Add-On is \$325 when bundled with a print advertisement.

4.5 Payment to the Contractor for the Services pursuant to this Contract shall not exceed the total sum of \$300,000. The Contractor shall not receive any other payment for the Services. The Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments are projected to reach \$300,000. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor will promptly consult with the Contract Manager and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached.

4.6 The Contractor shall separately invoice each requesting Agency Coordinator for receipt of payment. Unless a payment is unauthorized, deferred, delayed, or setoff under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the receipt by an Agency Coordinator of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if: (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and (2) A Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland. The State is not liable for interest: (1) accruing more than one year after the 31st day after the Agency receives the proper invoice; Or (2) on any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is [REDACTED]. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption. Contractor's *eMarylandMarketplace* vendor ID number is 272122.

4.7 In addition to any other available remedies, if, in the opinion of the Agency Coordinator, the Contractor fails to perform in a satisfactory and timely manner, the Agency Coordinator may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Agency Coordinator. The Agency's final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

4.8 The Contractor may notify the Contract Manager if any non-disputed and correctly submitted invoice to an Agency Coordinator has not been paid within sixty (60) days from the date of the invoice submission. The Contract Manager shall attempt to expedite payment to the Contractor.

4.9 If by the end of the Contract period, the Agencies have collectively failed to place the minimum annual rate of \$75,000 in Services, the Contractor may submit a single supplemental invoice to each Agency that ran one or more advertisements that were billed pursuant to sections 4.1(A) through (D) of this Contract (collectively, the "Print Services") during the Contract term.

This single supplemental invoice shall cover short-fall billing for Print Services placed by the Agency during the Contract term and shall separately reference the original purchase date and pricing of the Print Services with the new adjusted short-fall price and current amount owed. The short-fall billing may not exceed a 25% surcharge on the rates listed in Sections 4.1(A) through (D). The Contractor may not short-fall bill for the Services described in Sections 4.1(E), 4.2, 4.3, or 4.4. All invoices under this Section 4.9 shall be submitted to the respective Agency Coordinator by April 30, 2020.

5. Use by Non-State of Maryland Government Entities

Maryland nonprofit entities and Maryland county, municipal, and other non-State of Maryland governments within Maryland may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases by Maryland nonprofit entities and non-State of Maryland governments: (1) shall constitute Contracts between the Contractor and that government, agency or organization; (2) shall not constitute purchases by the State or State agencies under this Contract; (3) shall not be binding or enforceable against the State; and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State of Maryland agency. The Contractor shall report quarterly to the Contract Manager non-State of Maryland governments and Maryland nonprofit entities which have obtained services under the provisions of this Contract and the aggregate value of such usage, along with an annual and end of Contract summation of the contents of these quarterly reports. All Contract prices, terms and conditions must be provided to any Maryland local government or Maryland nonprofit entity requesting services under this Contract.

6. Patents, Copyrights, Intellectual Property

6.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 6.3 below.

6.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

8. Non-Hiring of Employees

No official or employee of the State as defined under General Provisions Article section 5-101, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

9. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

10. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

11. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

12. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of this Contract.

13. Nonavailability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

14. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

15. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

16. Delays and Extensions of Time

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

17. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

18. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

19. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

20. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

21. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 21 shall survive expiration or termination of the Contract.

22. Right to Audit

22.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.

22.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.

- 22.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 22.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 22.5 This Section shall survive expiration or termination of the Contract.

23. Compliance with Laws

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

24. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of as of the date of this Contract.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of this Contract, was inaccurate, incomplete, or not current.

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the Services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer provided, however, that a contractor may assign monies receivable

under a contract after due notice to the State. Any such subcontract or assignment shall include the terms of sections 7, and 9 through 23 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The Contract shall not be assigned until all approvals, documents, and affidavits are obtained, completed and properly registered. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

26. Indemnification

26.1 The Contractor shall hold harmless and indemnify the State from and against any and all liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

26.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

26.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

26.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

26.5 The State shall not assume any obligation to indemnify, hold harmless, or pay collection and/or attorneys' fees that may arise from or in any way be associated with the performance or operation of this Contract.

26.6 This Section 26 shall survive termination of this Contract.

27. Living Wage

27.1 A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. This Contract has been deemed to be a Tier 1 contract.

27.2 Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee the current hourly rate established by the Department of Labor, Licensing and Regulations (DLLR). Refer to the DLLR website for specific information.

27.3 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland, including the submission of payroll reports to the Commissioner of Labor and Industry and the posting in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

27.4 The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

28. Commercial Non-Discrimination

28.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

28.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

28.3 As a condition of entering into this Contract, upon the request of the Maryland Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

29. Prompt Pay Requirements

29.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:

- A. Not process further payments to the Contractor until payment to the subcontractor is verified;

- B. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- C. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- D. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- E. Take other or further actions as appropriate to resolve the withheld payment.

29.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

29.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department or the State, concerning a withheld payment between the Contractor and subcontractor under this Contract, may not:

- A. Affect the rights of the contracting parties under any other provision of law;
- B. Be used as evidence on the merits of a dispute between the State and the Contractor in any other proceeding; or
- C. Result in liability against or prejudice the rights of the State.

29.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

29.5 To ensure compliance with certified MBE subcontract participation goals, the State may, consistent with COMAR 21.11.03.13, take the following measures:

- A. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- B. This verification may include, as appropriate:
 - (1) Inspecting any relevant records of the Contractor;
 - (2) Inspecting the jobsite; and
 - (3) Interviewing subcontractors and workers.
 - (4) Verification shall include a review of:
 - (a) The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- C. If the State determines that the Contractor is in noncompliance with certified MBE participation goals, then the State will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action.

- (1) Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- D. If the State determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the State requires, then the State may:
- (1) Terminate the Contract;
 - (2) Refer the matter to the Office of the Attorney General for appropriate action; or
 - (3) Initiate any other specific remedy identified by the Contract, including the contractual remedies regarding the payment of undisputed amounts.
- E. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

30. Electronic Procurement Transactions Authorized

- 30.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- 30.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the Contract.
- 30.3** "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- 30.4** In addition to specific electronic transactions specifically authorized in other sections of the Contract (e.g. §4.3 related to EFT) and subject to the exclusions noted in section 30.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described: The Procurement Officer, the State's Contract Manager and the Contractor may conduct day-to-day Contract administration, except as outlined in section 30.5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.
- 30.5** The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. filing of protests;

2. filing of Contract claims;
3. submission of documents determined by the Department to require original signatures (e.g. Contract execution, Contract modifications, etc); or
4. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.

30.6 Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the Contract or in the direction from the Procurement Officer or Contract Manager.

31. Administrative

31.1 Contract Manager and Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

31.2 Notices. All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State:

Andrea Lockett, Contract Manager
State of Maryland
Department of Budget of Management
Division of Procurement Policy & Administration
45 Calvert Street, Room 145
Annapolis, MD 21401
410-260-7374

If to the Contractor:

Brian Price
Director, Advertiser Marketing Solutions
Baltimore Sun Media Group
501 N. Calvert Street, P. O. Box 1377
Baltimore, Maryland 21278-0001
410-332-6438

IN WITNESS THEREOF, the parties have executed this Contract as of the date herein above set forth.

Contractor:
The Baltimore Sun Company, LLC

State of Maryland
Department of Budget and Management

[Redacted Signature]

[Redacted Signature]

By: [Redacted Signature]

[Redacted Signature]

Print Name
[Redacted Name]

Title

Date: 1-30-2019

Date: 2/26/19

Witnessed By: [Redacted Signature]

Witnessed By: [Redacted Signature]

Date: 1-30-19

Date: 2/26/2019

Approved for form and legal sufficiency
this 1st day of February, 2019.

[Redacted Signature]
Assistant Attorney General

APPROVED BY THE BPW: Feb. 6, 2019
(Date)

5-S
(BPW Item #)