

Facility Use and Cooperation Agreement

This Facility Use and Cooperation Agreement (“Agreement”) is entered into as of this 15th day of October 2021 (the “Effective Date”), by and between the Board of Governors of Missouri State University (“University”) and Springfield Daily Citizen, Inc. (“Citizen”) for the use of certain University Facilities (“Facility”) as herein defined, and for the cooperation of certain Endeavors (“Endeavors”), as herein defined.

Whereas, the University is a public institution of higher education with its main campus located in Springfield, Missouri. University operates with a public affairs mission centered on the three pillars of ethical leadership, cultural competence, and community engagement.

Whereas, Citizen is a nonprofit news organization dedicated to providing the Springfield, Missouri community with new stories with a focus on public affairs topics to encourage discourse, strengthen democracy, and foster participation that contributes to the quality of life in Springfield and the local region.

Whereas, University has identified space on its Springfield campus available for use by Citizen, and Citizen has agreed that such space is acceptable for Citizen’s operations. The Parties seek to enter into this Agreement to set forth the terms and conditions of Citizen’s use of University space, as well as outline potential Endeavors between Citizen and University.

Now therefore, in consideration of the mutual promises in this Agreement, the sufficiency and existence of which is herein acknowledged and agreed, the parties agree as follows:

1. **License.** Subject to the terms of this Agreement, University agrees to allow Citizen the use of the Facility and equipment at the University’s Springfield Campus. For purposes of this Agreement, Facility shall mean the space identified in Schedule 1, attached hereto, and incorporated fully by this reference.
2. **Use.** Citizen agrees to use the Facility for the sole purpose of conducting its operations as a separately created non-profit entity focused around local news coverage. Citizen will use the Facilities during regular University business hours and any pertinent after hours and weekend hours as may be necessary to fulfill Citizen’s purposes. While using the facilities, Citizen agrees to:
 - 2.1 Comply with all applicable University policies, regulations, and directives pertaining to the use and occupancy of the Facility. Citizen agrees to comply with all University policies, regulations, and directives governing the use of University internet, wi-fi, phone, parking, and Facility key and card access.
 - 2.2 Comply with all applicable state, federal, and city laws, ordinances, and other regulations pertaining to the use and occupancy of the Facility. Citizen agrees to comply with all University policies, regulations, and directives governing use of University internet, wi-fi, phone, parking, and Facility key and card access.

2.3 Take good care of the Facility and to maintain the Facility in as good order and condition as it was prior to Citizen's use.

2.4 Not use or allow the Facility to be used for any unlawful purpose. Citizen agrees to not commit or allow to be committed any waste or nuisance in or about the Facility or subject the Facility to any activity that would damage the Facility.

3. University Access Granted.

3.1 University agrees to provide Citizen with access to internet, wi-fi, phone, and Facility key and card access throughout the Term of this Agreement. The Parties acknowledge and agree that University shall not be responsible for the hosting, licensing, or other digital facilitation of Citizen's operations, and that Citizen is responsible for the hosting, licensing, and other digital facilitation of Citizen's operations.

3.3 The University is not providing any Parking for Citizen personnel pursuant to this Agreement. Parking is available for a fee through the University's Transportation Services Office upon payment of the appropriate permit fee.

3.4 University will allow Citizen to place its name and logo, at its own expense, on the entrance door to the Facility, in accord with University's standards, and with University's prior approval. University will place Citizen's name, at University's expense, at the monument sign in front of the Facility, in accord with University standards and Citizen's prior approval.

3.5 The University has populated the Facility with existing office furniture available through the University's existing inventory and as set forth on Schedule 2. Citizen may utilize such furniture during the Term of this Agreement. Should Citizen seek to obtain alternative or additional furniture, Citizen and University shall coordinate for the removal of the existing University property.

4. Costs. The University agrees to provide the Facility to Citizen at no cost, including maintenance, custodial, waste disposal, internet, wi-fi, and phone. University shall also be responsible for the cost of all utilities used at the Facility. University shall provide initial keys and up to twenty (20) initial access cards at no cost and will, at Citizen request and cost, provide extra or replacement cards to the Facility from time to time. Citizen shall maintain records of access cards, share records of access cards with University upon request, and notify University of any lost or stolen card or termination of employment. Citizen shall not make copies of any keys, nor may it re-key or alter any locks or install any additional locks, security systems, or other measures to restrict access without University's prior consent, in which case it will ensure University has access as required herein. University reserves the right to install or change any locks or security systems at the Facility from time to time as part of its operation. Citizen may, at its sole expense, from time to time, and following written approval of University, request non-structural alterations and changes to the Facility as Citizen shall deem expedient or necessary for its purposes; provided, however, that such alterations and changes shall neither impair the structural soundness, nor diminish the value of the Facility.

5. Term. The term of this Agreement will be for a three (3) year period beginning on the Effective Date ("Initial Term"). Following the expiration of Initial Term this Agreement will automatically renew for an additional two (2) year term, unless either Party provides notice of termination / nonrenewal as set forth in this Section ("Renewal Term"). Thereafter, after the expiration of the first Renewal Term, this agreement will automatically renew for additional two (2) year terms, unless otherwise terminated / not renewed. Taken together the Initial Term and any Renewal Term shall be the Term of this Agreement. Notwithstanding the foregoing, this Agreement may be terminated regardless of the Term at any time and for any or no reason upon one (1) year prior written notice to the other party. For purposes of this Agreement, Business Day shall mean any day in which University's business offices are open for operations.

6. Endeavors. From time to time during the Term of this Agreement, University and Citizen may collaborate on common initiatives for the mutual benefit of both Parties ("Endeavors"). Such Endeavors may include, but are not limited to, the provision of a University Graduate Student(s) for Citizen activities or Citizen offering University's student's paid internships.

7. Indemnification/Insurance.

7.1 Citizen agrees to conduct its activities in the Facility (and Common Areas) in a careful and safe manner. As a material part of the consideration to University, Citizen agrees to assume all risk of damage to and loss or theft of Citizen's property (of which Citizen is solely responsible for providing adequate insurance) while at University, reasonable damage to the Facility, and injury or death to persons related to Citizen's use or occupancy of the Facility in, upon, or about the Facility from any cause with the exception of electrical and storm-related damages resulting in fire, and Citizen waives all claims against University. Citizen agrees to be liable for, defend and indemnify University against all claims, suits, judgments or damages, including the cost of administrative hearings, court costs and attorneys' fees, arising out of the negligent or intentional acts or omissions, or violations of state or federal laws or regulations, of or on the part of Citizen or its agents, officers, subcontractors or employees.

7.2 The Parties recognize and acknowledge that University is a political subdivision of the State of Missouri. As a political subdivision, University's liability shall be limited by the provisions of sovereign immunity, government immunity, and any other immunities recognized by applicable law. University shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by University, its employees, agents, or subcontractors, in the performance or omission of any act or responsibility under this Agreement

7.3 Citizen agrees to have and maintain, at the Citizen's sole expense, adequate insurance to protect against any loss, damage, and/or expense related to the Citizen's operations, including Citizen's obligations under this Agreement. Such insurance must include a media liability insurance policy or media liability coverage endorsement. The insurance coverage must identify the Board of Governors of Missouri State University, its officers, employees, and representatives as additional insureds. Citizen will provide a Certificate of Insurance evidencing such insurance upon request of the University.

8. Disclaimer of Warranty.

The University makes no warranty as to the sufficiency of the Facility for Citizen's purposes, provides the Facility AS IS. The Parties acknowledge and agree that the success of Citizen's business venture is speculative and depends upon the ability of Citizen, as an independent entity, to generate subscribers, and/or other forms of local financial support. University does not make any representation or warranty, express, or implied, as to the potential success of Citizen's operations or the Facilities' feasibility for that operation. Moreover, Citizen acknowledges that the internet is an unsecure, unstable, unregulated and unreliable environment, and the ability of Citizen to deliver content using services using the internet is dependent on the internet and the equipment, software, systems, data and services provided by various third parties. University does not warrant that the provision of wi-fi identified in this Agreement will operate without interruption or delay and/or be error free. In no event shall University be liable for lost profits or business, loss of goodwill, loss of data, interruption of business, or for any exemplary, punitive, special, indirect, incidental, or consequential damages, regardless of whether such claim arises under any theory of tort, contract, strict liability or otherwise in connection with any loss of wi-fi, utilities, or other obligation of University set forth herein. University's sole obligation and liability with respect to any failure of wi-fi, utilities, or other obligation of the University shall be to use reasonable efforts to remedy the issue as soon as practicable and consistent with University's internal operations.

9. Environmental Regulations. Licensee will not permit any Hazardous Substance to be used, stored, generated or disposed of on, in or about, or transported to or from, the Facility, by Citizen, Citizen's agents, employees, contractors, invitees, or licensees. In this Agreement, Hazardous Substance means any substance regulated by any local government, the State of Missouri or the United States government. "Hazardous Substance" includes any material or substances which are defined as "hazardous material," "hazardous waste," "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local government law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls and petroleum. If Citizen breaches these obligations, or if the presence of Hazardous Substances on, in or about the Facility caused or permitted by Citizen results in contamination of any part of the Facility, or if contamination by Hazardous Substances otherwise occurs in a manner for which Citizen is legally liable, then Citizen will be responsible for any and all claims, actions, damages, fines, judgments, penalties, costs, liabilities, losses and expenses (including, without limitation, any sums paid for settlement of claims, court costs, attorneys' fees, consultant and expert fees) arising during or after the expiration or termination of this Agreement as a result of any breach or contamination. Without limitation, if Citizen causes or permits the presence of any Hazardous Substance on, in or about the Facility and this results in contamination of any part of the Facility, Citizen will promptly, at its sole cost and expense, take all necessary actions to return the Facility and any adjacent facility to the condition existing prior to the presence of any Hazardous Substance; provided, however, Citizen shall first obtain University's approval for any such remedial action.

10. Assignment and Subletting. Citizen does not have the right to assign this Agreement or allow any other person or entity to use or occupy any of the Facility without the prior written agreement of the University, which consent may be granted or withheld in the University's sole discretion.

11. Default. If Citizen fails to comply with any agreements as outlined herein, or otherwise fails to comply with or observe any other provision of this Agreement ("Default"), University will notify Citizen of such Default, and Citizen will have thirty (30) days, or such other time as mutually agreed by the Parties to be reasonable, to correct such Default. Should Citizen fail to correct such Default within the time set forth in this Section 11, in addition to any other remedy that may be available to the University, whether at law or in equity, the University may terminate this Agreement and all rights of Citizen herein.

12. Interpretation. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of the State of Missouri, the courts of which state shall have jurisdiction over its subject matter.

13. Relationship. Neither Citizen nor any personnel of Citizen will for any purpose be considered employees or agents of University. Citizen assumes full responsibility for the actions of Citizen's employees, and is solely responsible for their supervision, daily direction, and control.

14. Authority. The individuals signing below represent and warrant that each are duly authorized to execute and deliver this Agreement and that this Agreement is binding upon the Parties in accordance with its terms.

15. Nondiscrimination. This Parties agree not to discriminate on the basis of race, color, national origin (including ancestry, or any other subcategory of national origin recognized by applicable law), religion, sex (including marital status, family status, pregnancy, sexual orientation, gender identity, gender expression, or any other subcategory of sex recognized by applicable law), age, disability, veteran status, genetic information, or any other basis protected by applicable law.

Springfield Daily Citizen, Inc.

The Board of Governors of
Missouri State University

By: Thomas J. Carlson
Name: THOMAS J CARLSON
Title: Chair

By: Clifton M. Smart III
Name: CLIFTON M. SMART III
Title: PRESIDENT