

## **MATERIALS AND/OR SERVICE CONTRACT**

**THIS CONTRACT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **AUTOMATED DIRECT MAIL SERVICE CENTER, INC.**, hereinafter referred to as **"INDEPENDENT CONTRACTOR,"** whose mailing address is 3892 Prospect Avenue, Business Park One, Riviera Beach, Florida 33404 and the **CITY OF RIVIERA BEACH, FLORIDA**, a municipal corporation, hereinafter referred to as **"CITY,"** whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

In consideration of the mutual covenants and promises set forth herein, the parties to this Contract do hereby agree as follows:

1. That the CITY does hereby retain the services of the INDEPENDENT CONTRACTOR for the purpose of providing mail services for the CITY of Riviera Beach's billing invoices. The scope of work is as set forth more fully in the General Terms & Conditions and Special Terms and Conditions in Bid No. 672-16, Exhibit "A" attached hereto and incorporated herein by reference.

2. The CITY agrees to compensate the INDEPENDENT CONTRACTOR in accordance with fee schedule attached hereto as Exhibit "B". The CITY shall not reimburse the Contractor for any travel costs incurred as a direct result of the INDEPENDENT CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit "A".

3. This Contract consists of this Contract, Bid No. 672-16 (Exhibit "A") and the INDEPENDENT CONTRACTOR's fee proposal (Exhibit "B"). The INDEPENDENT CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract, Exhibit "A" and Exhibit "B". To the extent that there exists a conflict between this Contract, Exhibit "A" and Exhibit "B", the terms, conditions, covenants, and/or provisions of this Contract shall prevail over all others.

4. The period of the Contract shall be five (5) years, with an option to renew the contract for one (1) additional twelve (12) month period. The option for renewal will be exercised only upon mutual written agreement and with all original terms, conditions and specifications of the Contract remaining the same with no deviations. All prices, terms and conditions shall remain fixed for the initial five (5) year period of the contract with a price adjustment made after the fifth year of the contract and upon the first renewal based on the consumer price index (CPI) for all Urban Consumers (CPI-U), Miami, FL August 2010. Any additional renewals shall be approved and executed by the City Manager on behalf of the CITY.

5. INDEPENDENT CONTRACTOR hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances governing the work to be performed. Further, INDEPENDENT CONTRACTOR shall be solely

responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Contract from any federal, state, regional, county, or CITY agency.

6. This Contract, and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to the laws of the State of Florida. Venue for any and all legal action necessary to enforce the Contract will be held within Palm Beach County.

7. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

8. The INDEPENDENT CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

9. All of the services required hereunder shall be performed by the INDEPENDENT CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

10. The INDEPENDENT CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the INDEPENDENT CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

11. All of the INDEPENDENT CONTRACTOR's personnel (and all Subcontractors) while on CITY premises will comply with all CITY requirements governing conduct, safety and security.

12. The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the INDEPENDENT CONTRACTOR. The INDEPENDENT CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the INDEPENDENT CONTRACTOR authorized to use the CITY's Tax Exemption Number in securing such materials.

13. The INDEPENDENT CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes, Section 112.311. The INDEPENDENT CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The INDEPENDENT CONTRACTOR shall notify the CITY's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the INDEPENDENT CONTRACTOR's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of the work that the INDEPENDENT CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the INDEPENDENT CONTRACTOR. The CITY agrees to notify the INDEPENDENT CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification of INDEPENDENT CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest, or circumstance would not constitute a conflict of interest by the INDEPENDENT CONTRACTOR, the CITY shall state in the notification and the INDEPENDENT CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the INDEPENDENT CONTRACTOR under the terms of this Contract.

Further, please be advised, in accordance with section 112.313, Florida Statutes, and pertinent Opinions of the Florida Commission on Ethics, that if you or certain representatives of your company are a member of a city board, including an advisory board, you may be ineligible to enter into a contract/agreement with the CITY. If you are a member of a city board, including an advisory board, prior to executing this contract, please contact the Florida Commission on Ethics at (850) 488-7864 to secure an informal advisory opinion regarding your eligibility to enter into this contract.

14. Prior to execution of this Contract by the CITY the INDEPENDENT CONTRACTOR shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the INDEPENDENT CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CITY's representative. Compliance with the foregoing requirements shall not relieve the INDEPENDENT CONTRACTOR of its liability and obligations under this Contract.

15. The INDEPENDENT CONTRACTOR shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The INDEPENDENT CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

16. The INDEPENDENT CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the INDEPENDENT CONTRACTOR or its subcontractors and without their fault or negligence.

17. The INDEPENDENT CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000 per occurrence to protect the INDEPENDENT CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the INDEPENDENT CONTRACTOR or by anyone directly employed by or contracting with the INDEPENDENT CONTRACTOR.

18. The INDEPENDENT CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the INDEPENDENT CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the INDEPENDENT CONTRACTOR or by anyone directly or indirectly employed by the INDEPENDENT CONTRACTOR.

19. The INDEPENDENT CONTRACTOR shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.

20. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the INDEPENDENT CONTRACTOR shall specifically include the CITY as an "Additional Insured."

21. The INDEPENDENT CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of any and all applicable manufacturer's warranty as it relates to the materials and parts used to accomplish the work.

22. To the extent allowed by Florida law, the INDEPENDENT CONTRACTOR shall indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act, recklessness, omission, or intentional wrongful conduct of the INDEPENDENT CONTRACTOR, its agents, officers, servants, or employees in the performance of services under this Agreement.

23. The INDEPENDENT CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the INDEPENDENT CONTRACTOR not included in the paragraph above and for which the CITY, its agents, officers, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

24. The INDEPENDENT CONTRACTOR shall pay the claims, losses, liens, fines, settlements, or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Agreement or any renewal thereof.

25. The INDEPENDENT CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Contract.

26. The CITY reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the INDEPENDENT CONTRACTOR of the CITY's notification of a contemplated change, the INDEPENDENT CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CITY of any estimated change in the completion date, and (3) advise the CITY if the contemplated change shall effect the INDEPENDENT CONTRACTOR's ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the INDEPENDENT CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY's decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the INDEPENDENT CONTRACTOR shall not commence work on any such change until such written amendment is signed by the INDEPENDENT CONTRACTOR and approved and executed by the City Manager for the CITY.

27. This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County.

28. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

29. If any action, whether in law, equity or otherwise, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to

appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

30. The INDEPENDENT CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals which are legally required to conduct business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY upon request. The INDEPENDENT CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals, and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or city agency.

31. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of the CITY's right to enforce or exercise said right(s) at any time thereafter.

28. If any term or provision of this Contract, or the application thereof of any person or circumstance shall, by any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

29. The INDEPENDENT CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, gender orientation, or sexual orientation. Further, INDEPENDENT CONTRACTOR shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, gender orientation, sexual orientation or handicap.

30. The INDEPENDENT CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion on this Contract. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the INDEPENDENT CONTRACTOR's place of business.

31. The INDEPENDENT CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the INDEPENDENT CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working for the INDEPENDENT CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

32. This Contract may be terminated by the INDEPENDENT CONTRACTOR upon thirty (30) days prior written notice to the CITY's representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of

the INDEPENDENT CONTRACTOR; provided the CITY fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the INDEPENDENT CONTRACTOR. Unless the INDEPENDENT CONTRACTOR shall be paid for services rendered to the CITY's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY the INDEPENDENT CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in progress, completed work, and other materials related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

33. The INDEPENDENT CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the service.
- (b) Upon request from the CITY's custodian of public records or designee, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the INDEPENDENT CONTRACTOR does not transfer the records to the CITY.
- (d) Upon completion of this Contract, transfer, at no cost, to the CITY all public records in possession of the INDEPENDENT CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the INDEPENDENT CONTRACTOR transfers all public records to the CITY upon completion of the Contract, the INDEPENDENT CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the INDEPENDENT CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records or designee, in a format that is compatible with the information technology systems of the CITY.

**IF THE INDEPENDENT CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 561-845-4046,**

**SKEMP@RIVIERABCH.COM, 800 WEST BLUE HERON BLVD.,  
RIVIERA BEACH, FL 33404.**

33. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

**SIGNATURES ON FOLLOWING PAGE**



## CONTRACT WITH THE CITY OF RIVIERA BEACH

**IN WITNESS WHEREOF**, the Parties unto this Contract have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

Automated Direct Mail Service Center, Inc.

BY: \_\_\_\_\_  
THOMAS A. MASTERS  
MAYOR

BY: \_\_\_\_\_  
Max Houss  
President

ATTEST:

(SEAL)

BY: \_\_\_\_\_  
CLAUDENE L. ANTHONY, CMC  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: \_\_\_\_\_  
ANDREW DEGRAFFENREIDT  
CITY ATTORNEY

DATE: 10/3/16

APPROVED AS TO TERMS AND  
CONDITIONS

BY: \_\_\_\_\_  
SYLVIA KEMP  
CUSTOMER SERVICE MANAGER

\_\_\_\_\_  
Purchasing Dept. initials