

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 30th day of JUNE, 2019, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and ABS Direct, Inc., a California Corporation, whose address of record is 4724 Enterprise Avenue, Modesto, California 95356, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to print and mail various notices and statements; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide printing and mailing services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the printing and mailing services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Finance Officer or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall be from July 1, 2019 through June 30, 2024.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B".

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. WAIVER. In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall

be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____

City Manager

ATTEST:

STEVE CARRIGAN, CITY CLERK

BY: _____

Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: _____

City Attorney

4-9-19
Date

ACCOUNT DATA:

BY: _____

Verified by Finance Officer

(SEE NEXT PAGE.)

Account Number: **Multiple Account Lines**

Amount: **\$192,235.00**

VERIFIED

BY:



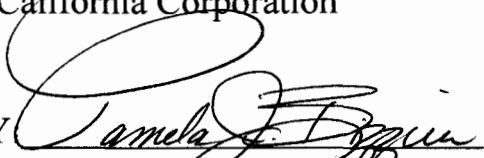
Finance Officer

FINANCE ENTRY	
Contract No:	300919
Vendor Number:	6577
P.O. Number:	134303
Funds Available:	Funds available contingent upon cc approval of budget. <i>us 5/8/19</i>
05/08/19	

FL 5/8/19

Account Number	Project	Amount
553-1107-532-13-00		\$ 51,004.00
553-1107-532-16-00		5,287.00
553-1107-532-17-00		3,984.00
557-1106-532-13-00		52,551.00
557-1106-532-16-00		5,449.00
557-1106-532-17-00		4,106.00
558-1112-532-13-00		51,005.00
558-1112-532-16-00		5,289.00
558-1112-532-17-00		3,985.00
001-0701-512-13-00		8,125.00
001-0701-512-16-00		1,450.00
		<hr/>
		\$ 192,235.00

CONSULTANT
ABS PRESORT, INC.,
A California Corporation

BY 
(Signature)

Pamela J. Bizzini
(Typed Name)

Its: V.P. Operations
(Title)

BY: 
(Signature)

E. Brian Bizzini
(Typed Name)

Its: CFO
(Title)

Taxpayer I.D. No. 77-0409177

ADDRESS: 4724 Enterprise Avenue
Modesto, CA 95356

TELEPHONE: (209) 545-6090

FAX: (209) 545-6095

E-MAIL: sales@abspresort.com
pamela.b@ABSDIRECTINC.COM

SCOPE OF SERVICES
FOR
THE CITY OF MERCED

Proposed Vendor: ABS Direct, Inc.

Services Requested: Printing and Mailing Services

Municipal Services Statements, Delinquent Notices & Shutoff Notices

ABS will provide the City of Merced with access to a secure .ftp site where they can upload their statement files. An email notification will be generated that notifies ABS that the files have been put into a folder that can only be accessed by The City of Merced and the assigned ABS Print Technician (Amanda Denys). Once the Print Technician has downloaded the file into the ABS secure print environment – the assigned Project Coordinator for The City of Merced (Leslie Titsworth) will be notified and she will generate a work order for the print file. The work order contains detailed information of the processing steps and any special instructions required for each type of notice that may be received.

Print Department:

- Will run files through CASS Certification to standardize the addresses and delineate each statement. They will also put files through barcoding/sorting software to put the statements in postal zipcode order for maximum postage savings. Statements will be generated and remain in this order throughout the production process. Data is merged with client statement artwork.
- Will review printed copies for accuracy of all information, comparing it to raw file to make sure all data imported correctly
- Will generate .pdf proofs and make them accessible for client review through the ABS Client Portal for City of Merced staff
- Will, upon approval from the City of Merced Staff, proceed to print production of statement files
- Will provide the Project Coordinator with a printed proof for review and sign off
- Will monitor print quality throughout the print process
- Will que MIS system when print production is finished and statements have moved to inserting department
- Will move file to archive folder and shred any spoilage
- Provide the City of Merced with a return file of .pdf images for use in their system
- Provide the Project Coordinator with any “Return Files” that the City of Merced may have requested

EXHIBIT A

Scope of Services (Cont.)

Page Two

Inserting/Finishing Department:

- Will receive printed material and pull stored material for inserting process
- Will que MIS system that inserting process has started
- Will provide Project Coordinator with beginning run samples for quality and accuracy of inserts prior to proceeding with full job
- Will inspect pieces as they are inserted to make sure addresses are clearly visible and envelope is sealed properly.
- Will place completed mail pieces in appropriate mail trays according to USPS automated mail requirements
- Will, upon completion of the project, verify that insert counts match print counts
- Will return any spoilage that may have occurred to the Print Technician for reprints
- Will place reprints into project to complete (Print Technician will shred spoilage)
- Will return all unused envelopes and insert material to inventory
- Will que MIS system that inserting has finished and move material to shipping department

Shipping Department

- Will inspect all material and match it to postal paperwork that was generated during the Printing Process
- Will upload Support Documents to the United States Postal Service through the Seamless System and move project to ABS Transportation for delivery to the main postal hub for the Central Valley located in West Sacramento.
- Will que MIS system that project has been completed and delivered to USPS
- Will close work order and submit all support documents to Accounting

Customer Service/Project Coordinator

- Will monitor the project throughout the ABS work process
- Will sign off on all stages of the project
- Will alert the client of any delays, concerns or issues
- Will make sure that any materials that need to be delivered back to the City of Merced are given to the ABS Merced Route Driver. The driver is in Merced daily between approximately 12:00 noon and 1:30
- Will monitor client supplies and make sure that all materials are logged into the system where the client can also monitor usage and time lines
- Will review the completed work order for accuracy
- Will review the ABS Accounting Statement to the City of Merced to make sure it reflects contract pricing

Process to be completed within 24-48 hours depending on file receipt time and file size. Delinquent and Shut-off notices will be processed same day whenever possible.

MR Statements, BL Renewals (Flat & Gross) and BL Delinquent (Flat and Gross)

all processed in the same manner. They require different forms which are all clearly identified within the ABS System and The City of Merced is always provided with sample copies for review prior to the start of printing.

Business License Postcards

Print Department:

- Will run files through CASS Certification to standardize the addresses. Data is merged with client statement artwork.
- Will review printed copies for accuracy of all information, comparing it to raw file to make sure all data imported correctly
- Will generate .pdf proofs and make them accessible for client review through the ABS Client Portal for City of Merced staff
- Will, upon approval from the City of Merced Staff, proceed to print production of license files
- Will provide the Project Coordinator with a printed proof for review and sign off
- Will monitor print quality throughout the print process
- Will queue MIS system when print production is finished and licenses have moved to shipping department
- Will move file to archive folder and shred any spoilage
- Provide the City of Merced with a return file of .pdf images (if required) for use in their system
- Provide the Project Coordinator with any "Return Files" that the City of Merced may have requested

Shipping Department

- Will inspect all material and make sure it is properly packaged
- Will notify courier supervisor that there is a project to be returned on route
- Will queue MIS system that project has been completed and is out for delivery
- Will close work order and submit all support documents to Accounting

Customer Service/Project Coordinator

- Will monitor the project throughout the ABS work process
- Will sign off on all stages of the project
- Will alert the client of any delays, concerns or issues
- Will fill out the delivery slip to return the Business License Postcards back to the City of Merced and place it in the work order for the shipping department.
- Will monitor color paper supplies and make sure that all materials are in stock or re-stocked when project is due to come in
- Will review the completed work order for accuracy
- Will review the ABS Accounting Statement to the City of Merced to make sure it reflects contract pricing

* Printing prices include paper and are bid the way that the items are currently printed

** Postage for all five years is based on current rates and will not change unless there is a USPS postage increase. Pricing is quoted at lowest rate possible up to 3.5 oz. Postage range is .383 to .459 based on address qualification and quantity

City of Merced
RFP-Printing and Mailing Services

Fee Schedule--Year 1

Description	Municipal Services Statements	Municipal Services Delinquent & Termination	Business License Statements	Business License Postcard	Miscellaneous Receivable Statements
Set up fee - current system	No Charge	No Charge	No Charge	No Charge	No Charge
Printing, including bar coding of address *	.045	.055	.05	.03	.05
Fold, insert and seal (Includes: Bill, #9, 1 extra Insert)	.02	.02	.02		.02
Meter and mail	.005	.005	.005		.005
Cost of #10 envelopes	.022	.022	.022		.022
Cost of #9 return envelopes	Provided by City of Merced	Provided by City of Merced	Provided by City of Merced		Provided by City of Merced
Estimated postage, sorted and bar coded **	.383	.383	.383	.257	.383
Other See Attached List of Additional Services					

Fee Schedule--Year 2

Description	Municipal Services Statements	Municipal Services Delinquent & Termination	Business License Statements	Business License Postcard	Miscellaneous Receivable Statements
Set up fee - current system	No Charge	No Charge	No Charge	No Charge	No Charge
Printing, including bar coding of address	.045	.055	.05	.03	.05
Fold, insert and seal	.02	.02	.02		.02
Meter and mail	.005	.005	.005		.005
Cost of #10 envelopes	.022	.022	.022		.022
Cost of #9 return envelopes	Provided by City of Merced	Provided by City of Merced	Provided by City of Merced		Provided by City of Merced
Estimated postage, sorted and bar coded	.383	.383	.383	.257	.383
Other See List of Additional Services at bottom of Fee Schedule Pages					

EXHIBIT B

City of Merced
RFP-Printing and Mailing Services

Fee Schedule--Year 3

Description	Municipal Services Statements	Municipal Services Delinquent & Termination Notices	Business License Statements	Business License Postcard	Miscellaneous Receivable Statements
Set up fee - current system	No Charge	No Charge	No Charge	No Charge	No Charge
Printing, including bar coding of address	.045	.055	.05	.03	.05
Fold, insert and seal	.02	.02	.02		.02
Meter and mail	.005	.005	.005		.005
Cost of #10 envelopes	.022	.022	.022		.022
Cost of #9 return envelopes	Provided by City of Merced	Provided by City of Merced	Provided by City of Merced		Provided by City of Merced
Estimated postage, sorted and bar coded	.383	.383	.383	.257	.383
Other					

Fee Schedule--Year 4

Description	Municipal Services Statements	Municipal Services Delinquent & Termination Notices	Business License Statements	Business License Postcard	Miscellaneous Receivable Statements
Set up fee - current system	No Charge	No Charge	No Charge	No Charge	No Charge
Printing, including bar coding of address	.045	.055	.05	.03	.05
Fold, insert and seal	.02	.02	.02		.02
Meter and mail	.005	.005	.005		.005
Cost of #10 envelopes	.022	.022	.022		.022
Cost of #9 return envelopes	Provided by City of Merced	Provided by City of Merced	Provided by City of Merced		Provided by City of Merced
Estimated postage, sorted and bar coded	.383	.383	.383	.257	.383
Other					

City of Merced
RFP-Printing and Mailing Services

Fee Schedule--Year 5

Description	Municipal Services Statements	Municipal Services Delinquent & Termination Notices	Business License Statements	Business License Postcard	Miscellaneous Receivable Statements
Set up fee - current system	No Charge	No Charge	No Charge	No Charge	No Charge
Printing, including bar coding of address	.045	.045	.045	.03	.05
Fold, insert and seal	.02	.02	.02		.02
Meter and mail	.005	.005	.005		.005
Cost of #10 envelopes	.022	.022	.022		.022
Cost of #9 return envelopes	Provided by City of Merced	Provided by City of Merced	Provided by City of Merced		Provided by City of Merced
Estimated postage, sorted and bar coded	.383	.383	.383	.257	.383
Other					

PARTIAL LIST OF ADDITIONAL SERVICES AVAILABLE

Create .pdf files and return.....\$00.01 ea.
 Programming Services.....\$80.00 per hour
 Client Portal to View Job Status..... No Charge
 Pick-up/Delivery at City Offices..... No Charge
 Flyer Design Services..... \$60.00 per hour
 Secure .ftp Access..... No Charge
 Printed #9 Single Window Envelope (Black Ink)..... \$00.0225 ea.
 Insert Printing..... Quote upon request
 Additional Inserts into Utility Bill (Under 3) No Charge
 Additional Inserts into Utility Bill (Over 3)..... \$00.01 ea
 Folding of Additional Inserts..... \$00.005
 CASS Addresses..... No Charge
 Storage of Envelopes/Inserts No Charge

PLEASE NOTE: Paper prices are very volatile due to mill closures. Paper pricing will be confirmed every year - if there have been no significant changes, the City will not receive any type of an increase.