

RESOLUTION NO. 24 , 2018

A RESOLUTION AUTHORIZING A CONTRACT WITH DAYTON MAILING SERVICES, INC. D/B/A DMS INK FOR DESIGN AND PRODUCTION SERVICES FOR CALENDAR YEAR 2019

WHEREAS, the City produces a monthly bulletin and an annual calendar providing valuable communication services to the residents of the City of Montgomery; and

WHEREAS, to most effectively deliver such communications, the Administration has requested proposals from various design and publication firms to quote the costs for professional services; and

WHEREAS, after reviewing such proposals, the staff has recommended that the City contract with Dayton Mailing Services, Inc., d/b/a DMS ink, to provide such professional services which would be exempt from competitive bidding, although the amount of the contract would exceed \$50,000 in a calendar year.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is authorized to execute the attached Master Agreement with Dayton Mailing Services, Inc., d/b/a DMS ink, for design, production and mailing services for the monthly bulletin and annual calendar in an amount not to exceed \$85,000 for calendar year 2019.

SECTION 2. The City Manager is hereby authorized to pay DMS ink according to the rate set forth within such contract and its attached schedules.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: October 3 2018

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Christopher P. Dobrozi
Christopher P. Dobrozi, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director



MASTER AGREEMENT

THIS MASTER AGREEMENT ("Agreement") is made as of the 8 day of October, 2018 ("Effective Date") between Dayton Mailing Services, Inc., an Ohio corporation, with its principal place of business at 888 Dayton St., Yellow Springs, Ohio 45387 ("DMS ink"), and The City of Montgomery, Ohio with its principal place of business at 10101 Montgomery Road, Montgomery Ohio 45242.

WHEREAS, The City of Montgomery desires to engage DMS ink to provide customer communications solutions products ("Monthly Bulletin from December 2018 to November 2019 and the 2019 calendar). The creative design for the calendar will commence in August 2018 and work on the Monthly Bulletin (December 2018 issue) will commence in November 2018.

WHEREAS, DMS ink desires to provide the Solutions as described herein;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows.

1. PRODUCTS AND SERVICES.

A. DMS ink shall provide the Solutions to The City of Montgomery as more fully described in this Agreement. The City of Montgomery shall pay for the Solutions provided in accordance with Section 3 in this agreement.

2. RESPONSIBILITIES.

A. Responsibilities of DMS ink. DMS ink will (i) meet with The City of Montgomery representatives and provide instructions, explanations, guidelines and other information about the Solutions; (ii) perform the Services as set forth in this Agreement and each statement of work; (iii) assign a suitable number of DMS ink representatives to oversee the Solutions; and (v) manufacture or otherwise supply the Solutions outlined in the agreement.

B. Responsibilities of The City of Montgomery will (i) supply accurate data as may be requested by DMS ink to enable DMS ink to provide the Solutions; (ii) designate an employee to serve as administrator of each Solution who shall be DMS ink's primary contact with respect to the Solution and (iii) who shall educate DMS ink representatives about The City of Montgomery business operations as it relates to the Solution(s), (iv) assist in the coordination of the relationship between the parties, and (v) authorize the creation, modification, manufacture, distribution, procurement and destruction of Products; (vi) permit DMS ink representatives commercially reasonable access to The City of Montgomery facilities and to The City of Montgomery representatives who are responsible for the Solutions; (vii) pay, when due, all invoices for Solutions outlined in the contract.

3. PRICING; INVOICING; PAYMENT.

A. Unless otherwise stated, The City of Montgomery shall pay DMS ink's established prices for the Solutions, as reflected in the signed agreement. Prices for Solutions outlined may not be increased or decreased as set forth in the agreement. DMS ink shall invoice The City of Montgomery and The City of Montgomery shall pay any such invoice in accordance with the terms set forth in the agreement. Postage will be paid upfront by The City of Montgomery with the use of their postage permit.

B. Master Services Fee Structure. The City of Montgomery shall pay the following fees for solutions provided under this Agreement.

Calendar - 32 pages (28 plus cover), 1 single insert sheets and outer envelope

One time design set up fee:	N/A	Total price
Creative:	\$50.00	Per page (32pgs.)
Printing:	8,014.53	Total price (color proof and printing of the 2018 calendar, 1 insert sheet and envelope)
Mailing Prep:	\$543.90	Total price
Postage:	to be determined	

Monthly Bulletin

One time design set up fee:	N/A	Total price
Creative:	\$85.00	Per page
Printing: 8 pages	\$1,720.80	Total price
12 pages	\$2,458.86	Total price
16 pages	\$2,892.07	Total price
Mailing Prep:	\$404.80	Total price
Postage:	to be determined	

**There will be a total of 3 proofs to review before additional charges occur. (The initial proof and 2 additional proofs after client changes)

4. WARRANTY.

DMS ink warrants the quality of the products and services provided will be free from any defects and errors for a period of 21 days from the mailing date or shipment from warehouse. DMS ink will be liable for the quality and accuracy of the output of the printing and mailing. DMS ink is not liable for the integrity of the data received for execution of the project.

Any defects or errors shall be reported to assigned account executive, account manager or the quality specialist at 937-222-5056 within the 21-day warranty period.

DMS ink is committed to customer satisfaction and prides ourselves in providing accurate and precise execution of the scope of work requested.

The proofing and quality control processes will allow for the correction of errors and approvals for production.

Certain circumstances are beyond DMS ink Control and are not covered by this Warranty Statement.

DMS ink will not be liable for:

- Spelling, punctuation or grammatical errors in artwork or data files received from a client
- Inferior quality or low-resolution of uploaded images by the client
- Error in user selected items; like product size, quantity, product type, etc.
- Design errors or color selection introduced in the art files submitted by client.
- Color Match with our hardcopy approval
- Delivery delays due to improperly prepared files
- Duplicate orders submitted by client
- Incorrect file layout for folding, scoring, drilling, die cutting or other custom services
- Damage to the products in transit. (USPS or Shipping Claims)

DMS ink is not responsible for any damages or claims incurred by client or the client's business caused by receiving printed materials which are defective or incomplete or which the client receives later than the estimated delivery date.

If the product quality or the output of the fulfillment or mailing is incorrect or damaged, DMS ink will replace and or re mail the incorrect or damaged mail piece. Parties will be notified with in twenty-four (24) hours after the error is discovered and provided a timeline to be agreed upon.

In no event will DMS ink be liable for any indirect, special, consequential, incidental, exemplary, or other damages whether DMS ink has been advised of the possibility of such loss or damage.

DMS ink entire liability under, for breach of, or arising out of providing the services hereunder, is limited to a refund of the fees paid for the product or service that gave rise to the claim. In no event shall DMS ink be liable for cost of procuring substitute goods.

5. LIMITATION OF LIABILITY.

A. In no event shall DMS ink be liable to The City of Montgomery or to any third party for consequential, special, punitive or incidental damages arising out of or relating to this agreement, even if DMS ink is advised of the possibility of such damages.

6. HOLD HARMLESS.

A. The City of Montgomery agrees to accept and be responsible for its own acts or omissions, as well as the acts or omissions of its employees, and nothing under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility for The City of Montgomery acts or omissions onto DMS ink.

B. DMS ink. DMS ink agrees to accept and be responsible for its own acts or omissions, as well as the acts or omissions of its employees, in providing Solutions under this Agreement and nothing under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility for DMS ink's acts or omissions onto The City of Montgomery. Further, DMS ink agrees to indemnify, defend and hold harmless The City of Montgomery, its directors, officers, agents, and employees from and against all claims, actions or causes of actions, including attorney's fees, arising out of DMS ink's actions or services under this Agreement.

7. CONFIDENTIALITY/TRADE SECRETS.

A. The parties understand and agree that during the course of providing the Solutions hereunder, either party may receive or otherwise learn certain items of business, trade secrets, technical, financial or other information owned by or otherwise in the possession of the other party ("Confidential Information"). Confidential Information may include, by way of example but without limitation, products, specifications, equipment, business strategies, customer lists, business requirement documents know-how, drawings, pricing information, inventions, ideas, and their potential uses. The parties agree to take and maintain proper and appropriate steps to protect Confidential Information. The parties agree to disclose the Confidential Information only to their respective employees or agents who are directly involved with the Solutions contemplated by this Agreement, and even then, only to such extent as is necessary and essential to perform the Solutions. The parties agree to inform such employees and agents of the confidential nature of the information disclosed hereunder and to cause all such employees and agents to abide by the terms of this Agreement. The parties agree not to disclose Confidential Information to any unauthorized party without prior express written consent of the other party or unless required by law or court order. If law requires either party or court order to disclose Confidential Information, each party agrees to provide the other prompt written notice of such requirement so that an appropriate protective order or other relief may be sought. During the term of this Agreement, nothing shall prevent either party from issuing press releases regarding the relationship between the parties, using the parties' names in customer lists and describing the formation of this Agreement or the existence of the relationship between the parties for purposes related to the investment community and in

documents designed generally for internal use. The parties understand that certain information regarding this agreement are a matter of public record and in such case may be released and the parties will be held harmless.

8. TERM; TERMINATION.

A. Unless otherwise terminated as provided herein, the initial term of this Agreement shall be from the Effective Date to November 1, 2019. This Agreement shall renew for a successive One (1) year terms with both parties in agreement, notified of the extension in writing on or before August 1, 2019. The City of Montgomery will provide DMS ink with notification of termination at least ninety (90) days prior to expiration of the then-current term.

B. Either party may terminate this Agreement at any time if the other party: (i) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach, or (ii) ceases operation without a successor. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Sections 6, 7 and 8, as well as general terms, shall survive any expiration or termination of this Agreement.

C. Payment Upon Termination. Upon termination of this Agreement, DMS ink shall complete all Products and Services then in process and The City of Montgomery shall pay for all such Products and Services and other outstanding fees. Payment arrangements must be made for payment of final services and shipment(s) of Product prior to shipping.

9. NOTICES.

A. Any notice required or permitted to be given under this Agreement shall be in writing, and shall be delivered personally, or sent by overnight courier service or by U.S. certified mail, return receipt requested, postage prepaid.

DMS ink
Attn: Contract Administration
888 Dayton St.
Yellow Springs, OH 45387

The City of Montgomery
10101 Montgomery Road
Montgomery, Ohio 45242

Either party may from time to time provide substitute or additional addresses (new addresses) for notices under this Agreement.

10. GOVERNING LAW.

A. This Agreement shall be construed in accordance to the laws of the State of Ohio.

11. DISPUTE RESOLUTION.

A. Any controversy or dispute between The City of Montgomery and DMS ink relating directly or indirectly to this Agreement, whether based on contract, tort, strict liability or other legal theory, shall be resolved in a court of competent jurisdiction located in the State of Ohio.

12. ASSIGNMENT.

A. This Agreement will inure to the benefit of and be binding upon the parties, their successors and assigns; provided, however, that neither party may assign all or any part of this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to an entity assuming all or substantially all of the assets of the assigning party, whether through merger, consolidation, sale of assets or otherwise. DMS ink reserves the right to engage third party contractors or affiliates for purposes of performing DMS ink's obligations hereunder.

13. COMPLETE AGREEMENT; AMENDMENT.

A. Each party acknowledges that it has read this Agreement and agrees to be bound by its terms. This is the complete and exclusive agreement and understanding between the parties concerning the subject matter of this Agreement, which supersedes all prior understandings, negotiations and proposals, oral or written. No modification, amendment, waiver, consent or discharge in connection with this Agreement will be binding unless it is in writing and signed by the party against whom enforcement is sought.

14. SEVERABILITY.

A. If any provision of this Agreement should, for any reason, be held invalid or unenforceable under the laws of any State or of the United States, the remainder of the Agreement shall not be affected. Instead, this Agreement shall be construed as if such invalid provision was not part of the Agreement.

15. FORCE MAJEURE.

A. DMS ink will not be deemed to be in default of or to have breached any provision of this Agreement because of any delay, failure in performance or interruption of service, resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, terrorist acts, strikes or other labor disputes, fires, interruptions of transportation, laws, regulations, acts or orders of any government or agency, other catastrophes, inability to obtain material or any other occurrence beyond DMS ink's reasonable control.

16. EXISTING CONTRACTS.

A. If applicable, this Agreement shall supersede all prior contracts or representations, oral or written, made by and/or between the parties.

17. CONSTRUCTION OF AGREEMENT.

A. The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against either party. The headings preceding each paragraph are for convenience only and shall not in any way be construed to affect the meaning of the paragraphs themselves.

18. NO IMPLIED WAIVER.

A. Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

19. AUTHORITY.

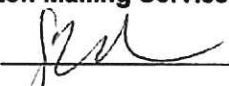
A. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

20. COUNTERPARTS.

A. This Agreement may be executed in one or more counterparts, each of which shall constitute a separate original agreement and all of which, taken together, shall constitute one agreement, by and all parties hereto, notwithstanding the fact that not all parties have signed the same counterpart. The exchange of copies of this Agreement and of signature pages by facsimile or electronic mail transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

Dayton Mailing Services – “DMS ink”

By: 

CHRISTINE SULVAN 9/2/18
Print Name Date

CEO
Print Title

The City of Montgomery

By: 

BRIAN K. RIBLET 10/8/18
Print Name Date

CITY MANAGER
Print Title

Approved as to form
William M. [Signature]