



**SECOND AMENDMENT TO DIRECT MAIL ADVERTISING  
AGREEMENT BETWEEN THE CITY OF PEMBROKE PINES AND  
MIAMI HERALD MEDIA COMPANY**

THIS AGREEMENT ("Agreement"), dated this 10<sup>th</sup> day of October 2019, by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation organized and operating under the laws of the State of Florida, with an address of 601 City Center Way, Pembroke Pines, FL 33025, hereinafter referred to as "ADVERTISER",

and

**MIAMI HERALD MEDIA COMPANY**, a foreign, for profit corporation authorized to do business in the State of Florida, with a local business address of 3511 NW 91 Ave, Miami, FL 33196, hereinafter referred to as "MHMC". "ADVERTISER" and "MHMC" may hereafter be collectively referred to as the "Parties".

**WHEREAS**, on **September 10, 2015**, the ADVERTISER and MHMC entered into the Original Agreement ("Original Agreement") for an initial **two (2) year period**, commencing on **October 1, 2015** and expiring on **September 30, 2017**; and,

**WHEREAS**, the Original Agreement authorized the renewal of the Agreement at the expiration of the initial term for additional two (2) year terms evidenced by a written amendment to the Original Agreement; and,

**WHEREAS**, on September 14, 2017, the Parties executed the First Amendment to amend the compensation amount and to enter into the first two (2) year renewal period, commencing on October 1, 2017 and expiring on September 30, 2019; and,

**WHEREAS**, to date the Parties have been satisfied with the performance and execution of the Agreement and desire to amend the Original Agreement, as amended, and renew the terms of their contractual relationship as set forth herein; and,

**WHEREAS**, the Parties desire to amend the Original Agreement, as amended, to include certain provisions required by statutory amendments imposed since the Parties entered into the Original Agreement; and,

**WHEREAS**, the Parties further desire to execute the **second two (2) year renewal** option and amend the Original Agreement, as amended, in accordance with the terms and conditions set forth herein.



WITNESSETH

**NOW, THEREFORE**, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

**SECTION 1.** The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

**SECTION 2.** Exhibit A "Quote Sheet" is hereby repealed and replaced with the **Exhibit A "Quote Sheet"** of this Second Amendment, attached hereto and by this reference made a part hereof.

**SECTION 3.** The Section of the Original Agreement, as amended, entitled "Payment" is hereby amended by the addition of the following:

All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

**SECTION 4.** The Original Agreement, as amended, is hereby amended by the addition of the following:

**Non-Discrimination and Equal Opportunity Employment.** During the performance of this Agreement, neither the MHMC nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability, if qualified. MHMC will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability, if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. MHMC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. MHMC further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this non-discrimination clause.

**Scrutinized Companies.** MHMC, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Florida Statute 287.135, as amended, a company is ineligible to, and may not, bid on,



submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 or is engaged in a boycott of Israel; or

One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473; or

Is engaged in business operations in Syria.

**SECTION 5.** The Original Agreement, as amended, is hereby renewed for the **two (2) year** renewal period commencing on **October 1, 2019** and terminating on **September 30, 2021**.

**SECTION 6.** In the event of any conflict or ambiguity by and between the terms and provisions of this Second Amendment, the First Amendment, and the Original Agreement, as amended, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity.

**SECTION 7.** The Parties agree that in all other respects the Original Agreement, as amended by this Second Amendment, and the First Amendment, shall remain in full force and effect, except as specifically modified herein.

**SECTION 8.** Each Exhibit referred to in the Original Agreement, as amended, except as repealed herein, forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

**THE REMAINDER OF THIS PAGE**

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IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

**ADVERTISER:**

CITY OF PEMBROKE PINES

BY:

Charles F. Dodge  
CHARLES F. DODGE  
CITY MANAGER

Marlene D. Graham  
MARLENE D. GRAHAM,  
CITY CLERK

APPROVED AS TO FORM

Quentin Morgan  
OFFICE OF THE CITY ATTORNEY

**MHMC:**

MIAMI HERALD MEDIA COMPANY

BY:

Print Name:

Title:

WITNESSES

Print Name

Print Name

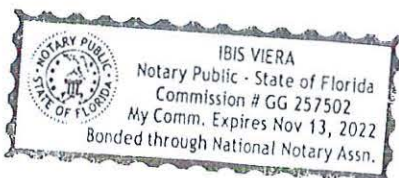
STATE OF Florida )

) ss:

COUNTY OF Miami - Dade )

**BEFORE ME**, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Donna Boase as Manager of **MIAMI HERALD MEDIA COMPANY**, an organization authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **MIAMI HERALD MEDIA COMPANY**, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 1 day of October, 2019.



Ibis Viera  
NOTARY PUBLIC

(Name of Notary Typed, Printed or Stamped)

## Quote Sheet

**Project Description:** 2020 & 2021 – 2yr. Term Agreement  
**Bid # 2337** **List & Letter shop Campaign**  
**Date:** 7/25/19  
**Advertiser:** The City of Pembroke Pines  
**Sales Representative:** Mauro Ponce  
**Quantity:** 66,131  
**List:** Residential & Business addresses (no vacancies) in select zip codes within city boundaries  
**Product Description:** Supplied pre-printed piece  
 20 or 24 tab 12X11 newsprint or  
 28 or 32 tab 12x11 newsprint  
**Lettershop:** Inkjet N&A on Cheshire labels, postal presort, sort, tie, & bag.  
 \* Address block must be a minimum of 4.5" w x 2.5" h.  
 (New postal regulations for Flats, address block needs to be on top of back page)  
 Client's indicia pre-printed (Sample supplied)  
**2yr Multi Use List Price:** No Charge  
**2 yr. Price for Letter-shop/ CPM:** \$26/M = \$1,719.40  
**2 yr. 6 DDU drops:** \$562  
**Materials Delivery Instructions:** Supplied directly to printer Julio Morales. All pieces must be delivered to address at one time.  
**Production Schedule:** TBD  
 Standard bulk 1-11 day delivery  
**2 yr. USPS Additional Drops:** \$135.00 for each drop for either GMF Miami or SCF South Florida. \$150.00 for Ft. Lauderdale and \$300.00 for West Palm Beach. Rate are for up to 2000 pounds.  
**If Applicable Delivery of overruns:** \$135.00 per location other than The Miami Herald \*\*Additional delivery charges will apply for any additional deliveries. Charges TBD based on number of boxes/weight & location of delivery\*\*  
**TOTAL: (Plus postage)** \$2,281.40 for 24 pg. Tab

Postage TBD (Based on standard or non-profit permit)

Price includes letter shop. Our responsibility ends with a signed form 3602 by the Post Office accepting product delivery. "This Agreement may be renewed for additional two (2) year terms upon mutual consent, evidenced by a written Amendment to this Agreement extending the term thereof."

The listed Postage estimate is subject to change based on final piece design, address file, point of entry of the mail, method of delivery to the Post Office and or changes to US. Postal Regulations.

Unless specified, price does not include pre-press, mailing surcharges, courier / freight charges, specialized list, tabs, postage or 7.0% sales taxes. Prices are good for 30 days and are based on current paper prices.

Our responsibility ends with a signed form 3602 by the Post Office accepting product delivery.

PLEASE SIGN AND RETURN BOTH COPIES FOR AGREEMENT

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Signed by: \_\_\_\_\_  
 (Must be signed by Principal of Firm)

Local Sales Representative

Accepted:  
 MIAMI HERALD

Advertising Manager





**FIRST AMENDMENT TO THE  
DIRECT MAIL ADVERTISING AGREEMENT  
FOR CITY CONNECT  
BETWEEN THE CITY OF PEMBROKE PINES AND  
THE MIAMI HERALD**

**THIS AGREEMENT**, dated this 14 day of September, 2017, *nunc pro tunc* August 23, 2017, by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation organized and operating under the laws of the State of Florida, with an address of 601 City Center Way, Pembroke Pines, Florida 33025, hereinafter referred to as "CITY",

and

**THE MIAMI HERALD HOLDING COMPANY, INC.**, a Delaware corporation d/b/a **The Miami Herald Media Company**, authorized to do business in the State of Florida, with a business address of 3511 NW 91 Avenue, Miami, Florida 33172, hereinafter referred to as "CONTRACTOR". "CITY" and "CONTRACTOR" may be collectively referred to as the "PARTIES".

**WHEREAS**, the CITY publishes "CITY CONNECT", which is currently a four-color, bi-monthly, 24-page tabloid size (11x12) newspaper; and,

**WHEREAS**, the CITY has a need to distribute CITY CONNECT to approximately 64,000 residents and businesses throughout the City and dropped at key locations; and,

**WHEREAS**, the City procured pricing for this distribution/direct mail advertising service under Section 35.25 of the Procurement Code;

**WHEREAS**, the Contractor was determined to be the most responsive/responsible vendor;

**WHEREAS**, Section 35.18(C)(7)(e) of the Procurement Code authorizes the City to enter into contractual services for **advertising for the purpose of public notifications**, without the competitive procurement requirement; and,

**WHEREAS**, Section 35.18(C)(7)(i) of the Procurement Code authorizes the City to enter into contractual services for **promotional items purchased for distribution to the public**, without the competitive procurement requirement; and,

**WHEREAS**, on **August 24, 2015**, the CITY and CONTRACTOR entered into the Original Agreement for **distribution/direct mail advertising service** for an initial **two (2) year period**, through **August 23, 2017**; and,



**WHEREAS**, the Original Agreement authorized the renewal of the Agreement for **additional two (2) year terms** upon mutual consent, evidenced by a written Amendment to the Agreement extending the term thereof; and,

**WHEREAS**, the pricing in the Original Agreement was for an estimated bi-monthly cost of \$2,176.93 which equates to \$13,061.58 annually based on the estimated quantities; and,

**WHEREAS**, the CONTRACTOR has proposed updated pricing for an estimated bi-monthly cost of \$2,281.40 which equates to \$13,688.40 annually, based on the estimated quantities; and,

**WHEREAS**, to date the Parties have been satisfied with the performance and execution of the Agreement, and desire to renew the terms of their contractual relationship as set forth herein; and,

**WHEREAS**, the Parties specifically seek to execute the **first two (2) year renewal** option and amend the Agreement in accordance with the terms and conditions set forth herein.

**W I T N E S S E T H**

**NOW, THEREFORE**, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1.** The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

**SECTION 2.** The pricing is hereby amended as shown in **Exhibit A "Quote Sheet"**.

**SECTION 3.** The Original Agreement is hereby amended by the addition of the following section related to Public Records:

**Public Records.** The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

- 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, 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, Fla. Stat., or as otherwise provided by law;
- C) Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following





completion of the contract if the contractor does not transfer the records to the CITY; and

D) Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the contractor or keep and maintain public records required by the CITY to perform the service. If the contractor transfer all public records to the CITY upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the 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, in a format that is compatible with the information technology systems of the CITY.

The failure of Contractor to comply with the provisions set forth in this agreement/contract shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

**IF THE 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 AT**

**CITY CLERK  
10100 PINES BOULEVARD, 5<sup>th</sup> FLOOR  
PEMBROKE PINES, FL 33026  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**SECTION 4.** The Original Agreement is hereby renewed for the **first two (2) year renewal** period commencing on **August 24, 2017**, through **August 23, 2019**.

**SECTION 5.** In the event of any conflict or ambiguity by and between the terms and provisions of this First Amendment, and the Original Agreement, the terms and provisions of this amendment shall control to the extent of any such conflict or ambiguity.

**SECTION 6.** The Parties agree that in all other respects the Original Agreement, as amended by the First Amendment, shall remain in full force and effect, except as specifically modified herein.





**SECTION 7.** Each Exhibit referred to in the Original Agreement, except as repealed herein, forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

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City of Pembroke Pines

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

MARLENE D. GRAHAM,  
CITY CLERK

CITY:

CITY OF PEMBROKE PINES

BY:

CHARLES F. DODGE  
CITY MANAGER

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY

WITNESSES

Althea Everett  
Print Name

Joe Bilella  
Print Name

CONTRACTOR:

THE MIAMI HERALD HOLDING COMPANY, INC.  
D/B/A THE MIAMI HERALD MEDIA COMPANY

BY:   
Print Name: Michelle Ionescu

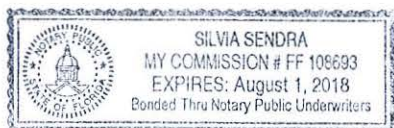
Title: Director, National Account Sales  
and Direct Marketing

STATE OF Florida

COUNTY OF Miami-Dade ss:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Michelle Ionescu as Director, National Account Sales of THE MIAMI HERALD HOLDING COMPANY, INC. D/B/A THE MIAMI HERALD MEDIA COMPANY, an organization authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of THE MIAMI HERALD HOLDING COMPANY, INC. D/B/A THE MIAMI HERALD MEDIA COMPANY, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 30 day of August, 2017.



NOTARY PUBLIC  
Silvia Sendra  
(Name of Notary Typed, Printed or Stamped)



# Miami Herald el Nuevo Herald

## Exhibit A - Quote Sheet

**Project Description:** 2018 & 2019 – 2yr. Term Agreement  
**List & Letter shop Campaign**  
**Bid # 2337**  
**Advertiser:** The City of Pembroke Pines

**Sales Representative:** Mauro Ponce  
**Quantity:** 66,131  
**List:** Residential & Business addresses (no vacancies) in select zip codes within city boundaries  
**Product Description:** Supplied pre-printed piece  
20 or 24 tab 12X11 newsprint or  
28 or 32 tab 12x11 newsprint  
**Lettershop:** Inkjet N&A on Cheshire labels, postal presort, sort, tie, & bag.  
\* Address block must be a minimum of 4.5" w x 2.5" h.  
(New postal regulations for Flats, address block needs to be on top of back page)  
Client's indicia pre-printed (Sample supplied)  
**1yr Multi Use List Price:** No Charge  
**1 yr. Price for Lettershop / CPM:** \$26/M = \$1,719.40  
**1yr. 6 DDU drops:** \$562  
**Materials Delivery Instructions:** Supplied directly to printer Julio Morales. All pieces must be delivered to address at one time.  
**Production Schedule:** TBD  
Standard bulk 1-11 days delivery.  
**1 yr. USPS Additional Drops:** \$135.00 for each drop for either GMF Miami or SCF South Florida. \$150.00 for Ft. Lauderdale and \$300.00 for West Palm Beach. Rate are for up to 2000 pounds.  
**If Applicable Delivery of overruns:** \$135.00 per location other than The Miami Herald  
\*\*Additional delivery charges will apply for any additional deliveries. Charges TBD based on number of boxes/weight & location of delivery\*\*  
**TOTAL: (Plus postage)** \$2,281.40 for 24 pg Tab  
Postage TBD (Based on standard or non-profit permit)  
Price includes letter shop. Our responsibility ends with a signed form 3602 by the Post Office accepting product delivery. "This Agreement may be renewed for additional two (2) year terms upon mutual consent, evidenced by a written Amendment to this Agreement extending the term thereof."

*The listed Postage estimate is subject to change based on final piece design, address file, point of entry of the mail, method of delivery to the Post Office and or changes to US. Postal Regulations.*

Unless specified, price does not include pre-press, mailing surcharges, courier / freight charges, specialized list, tabs, postage or 7.0% sales taxes. Prices are good for 30 days and are based on current paper prices.

**Our responsibility ends with a signed form 3602 by the Post Office accepting product delivery.**

**PLEASE SIGN AND RETURN BOTH COPIES FOR AGREEMENT**

**Company:** City of Pembroke Pines  
**Agency:** \_\_\_\_\_  
**Address:** 601 City Center Way  
**City/State/Zip:** Pembroke Pines, FL 33025

**Signed by:**   
(Must be signed by Principal of Firm)

  
**Sales Representative**  
**Accepted:**  
**MIAMI HERALD MEDIA COMPANY**  
  
**Advertising Manager**

APPROVED AS TO LEGAL FORM

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**OFFICE OF THE CITY ATTORNEY**  
**DATED:** 9-13-17

# HeraldDirect

RESULTS-DRIVEN DIRECT MARKETERS

## Quote Sheet

**Project Description:** October 2015 – 2yr. Term Agreement  
List & Letter shop Campaign  
**Date:** 8/24/15

**Advertiser:** The City of Pembroke Pines

**Sales Representative:** Bonita Adams

**Quantity:** 64,597

**List:** Residential & Business addresses (no vacancies) in select zip codes within city boundaries

**Product Description:** Supplied pre-printed piece (16 or 20 tab 12X11 newsprint)

**Lettershop:** Inkjet N&A on Cheshire labels, postal presort, sort, tie, & bag.  
\* Address block must be a minimum of 4.5" w x 2.5" h.  
(New postal regulations for Flats, address block needs to be on top of back page)  
Client's indicia pre-printed (Sample supplied)

**1yr Multi Use List Price:** No Charge

**1 yr. Price for Lettershop / CPM:** \$25/M = \$1614.93

**1yr. 6 DDU drops:** \$562

**Materials Delivery Instructions:** Supplied directly to printer Julio Morales. All pieces must be delivered to address at one time.

**Production Schedule:** TBD  
Standard bulk 1-11 days delivery.

**1 yr. USPS Additional Drops:** **\$135.00** for each drop for either GMF Miami or SCF South Florida. \$150.00 for Ft. Lauderdale and \$300.00 for West Palm Beach. Rate are for up to 2000 pounds.

**If Applicable Delivery of overruns:** **\$135.00** per location other than The Miami Herald  
\*\*Additional delivery charges will apply for any additional deliveries. Charges TBD based on number of boxes/weight & location of delivery\*\*

**TOTAL: (Plus postage)** \$2,176.93  
Postage TBD (Based on standard or non-profit permit)

Price includes letter shop. **Our responsibility ends with a signed form 3602 by the Post Office accepting product delivery.** "This Agreement may be renewed for additional two (2) year terms upon mutual consent, evidenced by a written Amendment to this Agreement extending the term thereof."

*The listed Postage estimate is subject to change based on final piece design, address file, point of entry of the mail, method of delivery to the Post Office and or changes to US. Postal Regulations.*

Unless specified, price does not include pre-press, mailing surcharges, courier / freight charges, specialized list, tabs, postage or 7.0% sales taxes. Prices are good for 30 days and are based on current paper prices.

**Our responsibility ends with a signed form 3602 by the Post Office accepting product delivery.**

PLEASE SIGN AND RETURN BOTH COPIES FOR AGREEMENT

Company: City of Pembroke Pines

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Sales Representative: Bonita Adams

Accepted: \_\_\_\_\_

THE MIAMI HERALD PUBLISHING  
A Division of Knight-Ridder, Inc.

Advertising Manager

APPROVED AS TO LEGAL FORM  
City/State/Zip: \_\_\_\_\_  
Signed by: \_\_\_\_\_

(Must be signed by Principal of Firm)

OFFICE OF THE CITY ATTORNEY

DATED: 9-10-15



## DIRECT MAIL ADVERTISING AGREEMENT

The following additional terms to the Direct Mail Advertising Agreement (the "Agreement") have been agreed to between The Miami Herald Holding Company, Inc., a Delaware corporation dba The Miami Herald Media Company ("MHMC") and the company engaging MHMC to provide Direct Mail Advertising services (the "Advertiser"):

**Rates.** MHMC reserves the right to revise rates, terms and specifications contained in the current rate cards at any time.

**Use of Mailing Lists.** MHMC does not guarantee the accuracy of any mailing lists being used by MHMC pursuant to this Agreement, regardless of whether the mailing lists are rented from a third party or are maintained by MHMC.

**Use of Postal Permits.** If the Advertiser chooses to use the Advertiser's (or another third party's) postal permit, then adequate estimated postage must be deposited in the permit account at least 3 business days prior to any scheduled postal drop date and, if this does not occur, MHMC shall not be responsible for meeting the scheduled postal drop date. If the Advertiser chooses to use MHMC's postal permit, then adequate estimated postage must be delivered to and received by MHMC at least 5 business days prior to any scheduled postal drop date and, if this does not occur, MHMC shall not be responsible for meeting the scheduled postal drop date.

**Determination of Postage.** Final determination of any postage amounts required to mail the advertising product produced pursuant to this Agreement will be made by the United States Postal Service ("USPS"). Advertiser acknowledges that, once MHMC has delivered the advertising product produced pursuant to this Agreement to USPS and the product has been cleared and verified by USPS, MHMC has no further responsibility for delivery of such product. MHMC expressly disclaims any guarantee of delivery and documentation of such delivery rests expressly with USPS.

**Response to Direct Mail.** MHMC does not represent or warrant that an advertising product produced and mailed pursuant to this Agreement will result in any specific "success rate" or "response rate."

**Shortages of Advertising Product.** Advertiser acknowledges that the routine printing and pre-press production of advertising product may result, in some cases, in mechanical damage to the printed material, shrinkage and other defacement of the advertising product which will cause certain pieces to be unsuitable for mailing. Advertiser acknowledges that, as a result, there may be a shortage in the advertising product which is available for a scheduled drop date. In this event, MHMC hereby undertakes to cure the shortage expeditiously and Advertiser hereby agrees in advance that such action by MHMC will mitigate any damages that might otherwise be available to Advertiser as a result of such an event.

**Review of Proofs.** MHMC is not liable for any error in a direct mail advertising product unless Advertiser has requested an advertising proof in writing, the advertising proof is clearly marked with any errors and MHMC is notified of the errors before the product is printed.

**Copyrights.** Advertiser agrees that by using the services of MHMC to provide direct mail advertising services, Advertiser licenses to MHMC on a non-exclusive basis all copyrights and other ownership rights in the advertising product, including the right to publish, reproduce, display, adapt, transmit, or produce derivative works in any medium, including any digital electronic medium. Advertiser represents that any copy submitted to MHMC is truthful and in compliance with all copyright laws and all other applicable laws and regulations.

**Payment.** Advertiser hereby warrants that it is not insolvent and that payment due will be paid in full upon receipt. Late payments will be subject to a finance charge at the maximum rate allowable under Florida law until paid. If any bills are not paid within the terms established, MHMC reserves the right to cancel this Agreement without notice and all charges incurred by MHMC prior to the date of cancellation shall be immediately due and payable to MHMC. In the event of a filing by or against Advertiser of a petition under the Bankruptcy Code, MHMC may cancel this Agreement and demand payment of all charges incurred by MHMC prior to the date of cancellation.

**Indemnification.** Advertiser agrees to indemnify and hold harmless MHMC and its affiliates, successors, or assigns against any and all costs, claims, damages or liability resulting from the transmission of the advertising product or arising from any breach of this Agreement. Advertiser agrees to indemnify and hold harmless MHMC and its affiliates, successors, or assigns for all expenses MHMC may incur to enforce collection of any amount due under this Agreement and agrees to pay all attorneys' fees and court costs incurred by MHMC in relation to such collection action.

**Unavoidable Nonperformance.** Advertiser and MHMC will not incur any liability to the other hereunder if performance by such party is prevented, interfered with or omitted due to (a) failure of facilities, which failure is outside the control of the party; (b) acts of God; (c) governmental action or (d) other similar extraordinary causes beyond the control of the party failing to perform.

**Limitation of Remedies and Liability.** In the event of alleged breach by MHMC of the Agreement or any other claims by the Advertiser against MHMC related to the Agreement, MHMC shall in no event be liable for any incidental or consequential damages, and MHMC shall in no event be liable for damages in excess of any amounts actually paid by the Advertiser to MHMC under the Agreement (which damage amount shall be the Advertiser's exclusive remedy).

**Choice of Law; Amendment; Assignment.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to conflict of law principles. The relationship between the Advertiser and MHMC is one of independent contractor. Nothing in the Agreement shall be construed as creating a joint venture or partnership between the parties. Accordingly, neither party has the authority (implied, apparent or expressed) to bind the other with respect to any matter. No modifications of the Agreement shall be binding upon either of the parties unless confirmed by a written instrument signed by Advertiser and MHMC. MHMC shall have the right to assign any and all of its rights under the Agreement to any of its affiliates, subsidiaries or successors. Advertiser shall not have the right to assign any of its rights or obligations under the Agreement without MHMC's written consent.

**Consent to Jurisdiction.** MHMC and Advertiser hereby irrevocably submit themselves to the jurisdiction of the courts of the State of Florida and to the jurisdiction of the United States District Court for the Southern District of Florida for the purposes of any action or other proceeding arising out of, or relating to, this Agreement and hereby waive and agree not to assert against each other in any action or proceeding any claim that they are not personally subject to the jurisdiction of the above-named courts. **Advertiser and MHMC knowingly, voluntarily and intentionally waive the right that each may have to a trial by jury with respect to any actions arising out of, or relating to, this Agreement.** In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' and paralegals' fees, costs and expenses, including fees and costs at the appellate level, in addition to any other relief to which it may be entitled. Each party hereto agrees that prior to instituting any lawsuit with regard to any dispute hereunder, the party will fully inform the other party of the nature of the dispute and anticipated claim and offer the other party a reasonable opportunity to cure. MHMC shall not be in breach of the Agreement absent written notice of the alleged breach to MHMC and failure by MHMC to cure (or to commence to cure) the breach within thirty (30) calendar days after receipt of the notice.

Signed by  \_\_\_\_\_