

RESOLUTION NO. 18-092

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE COMMITTEE RANKING OF THE PROPOSALS RECEIVED FOR EMS BILLING AGENCY SERVICES IN RESPONSE TO RFP NO. 002-18; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT IN CONFORMANCE WITH THE TERMS AND CONDITIONS CONTAINED IN RFP 002-18 UPON THE ADVICE AND CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City issued Request for Proposals No. 002-18 on December 7, 2017 for EMS Billing Agency services, and four proposals were received on January 24, 2018; and

WHEREAS, a committee comprised of City staff convened at a properly noticed meeting conducted consistent with the "Sunshine Law," on February 15, 2018, and ranked all proposals upon specific criteria; and

WHEREAS, the Committee recommends that the City Commission authorize the City Manager to negotiate and execute an agreement with the highest-ranked proposer.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the proposals for EMS Billing Agency services are hereby ranked and approved by the City Commission as follows:

- (1) Intermedix
- (2) Ambulance Medical Billing (AMB)
- (3) Change Healthcare
- (4) Life Quest

Section 2: That the City Manager or his designee is hereby authorized to negotiate and execute a contract with the first ranked firm in in conformance with terms and conditions contained in the Bid package, upon the advice and consent of the City Attorney.

Section 3: The cost of service will be based on the amount of revenue collected. Funds are budgeted in EMS Budget Account 001-2601-526-3400.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of March, 2018.

Authenticated by the Presiding Officer and Clerk of the Commission on 7th day of March, 2018.

Filed with the Clerk on March 7, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Absent</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

Agreement

This AGREEMENT is made and entered into this 1st day of October 2018, by and between the City of Key West, a municipal corporation of the State of Florida, whose address is 1300 White Street, Key West, Florida 33040, hereafter referred to as the "CITY" and Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation with principal offices whose address is 6451 N. Federal Highway, Suite 1000, Fort Lauderdale, FL 33308 (Intermedix), hereafter referred to as the "EMS Billing Agency". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

Article 1. Scope of Services

The EMS Billing Agency's primary responsibilities include, but are not limited to, emergency medical services (EMS) billing services for the City of Key West ("Project"). Additional work may include other consulting services which the EMS Billing Agency is qualified to provide and which the CITY authorizes the EMS Billing Agency to undertake in connection with the CITY's present and planned activities in the areas identified below. The CITY engages EMS Billing Agency to perform those Services described in the EMS Billing Agency's Proposal dated January 24, 2018, a copy of which is attached hereto, incorporated for reference, and more particularly described as Exhibit A. The specific task goals, task activities and key project milestones, which the EMS Billing Agency agrees to undertake, accomplish and furnish are set forth as follows:

Detailed Scope of Work

EMS Billing Agency shall provide billing services for emergency medical services transport. The EMS Billing Agency shall provide accounts receivable management as well as the funding of an ePCR solution.

- A. Provide billing and accounts receivable management services - The successful proposer shall provide billing and accounts receivable management services to the City for emergency medical services rendered by the City. The EMS Billing Agency shall file required documentation and agreements with all payers (e.g. Medicare, Medicaid, and private insurance companies).
- B. The EMS Billing Agency must have a minimum of 5 clients that exceed 3,000 transports or medical claims processed last fiscal year.
- C. The EMS Billing Agency must have a full-time compliance officer.
- D. The EMS Billing Agency must absorb all credit card and debit card fees incurred for processing.
- E. The EMS Billing Agency will scan images and all patient documents and attach this information to each trip.
- F. The EMS Billing Agency must work to establish relationships with all the CITY receiving hospitals and skilled nursing facilities.
- G. The EMS Billing Agency must demonstrate success interfacing ePCR technology to their billing system.
- H. The contractor must allow 24/7 web access to the billing system to access detailed patient billing processes to see all transactions on any account at any time.

- I. The EMS Billing Agency must provide both canned and custom reporting daily, weekly, monthly via a secure method.
- J. The EMS Billing Agency shall supply an ePCR solution that:
 - a. Provides interfaces with CITY Computer Aided Dispatch and CITY Fire software of choice (Emergency Reporting).
 - b. Complies with current National EMS Information System (NEMSIS) requirements and can be remotely updated to comply with future updated versions.
 - c. Complies with all Florida EMSTARS reporting requirements and monthly/annual reporting is automatically sent within the State reporting deadlines.
- K. The EMS Billing Agency will confirm every patient transported by KWFD insurance verification across Medicare if 65+, across Medicaid at the time of processing and retroactively.
- L. The EMS Billing Agency service center must have call times from 8 am to 8 pm eastern standard time.
- M. The EMS Billing Agency must record all inbound and outbound patient calls and be able to provide a recording of the call to the KWFD.
- N. The EMS Billing Agency must be able to accept NEMSIS EMS exports to the billing system.
- O. The EMS Billing Agency's reports must combine complete clinical data with financial data.
- P. The EMS Billing Agency must provide a patient web portal which includes:
 - a. Updates on insurance information
 - b. Credit Card/ Debit Card/e-Check processing without extra charge to the patient.
 - c. Re-occurring payment plans
- Q. The EMS Billing Agency's call center must support diverse languages on staff and have resources available for translation services when necessary.
- R. The EMS Billing Agency must provide a dedicated Client Service Representative to oversee all primary issues between the CITY and contractor.
- S. The EMS Billing Agency must ensure a segregation of duties, whereby the same individual must not be able to enter billing, adjust billing, post payments, nor deposit funds; and maintain the necessary levels of security in their automated billing system to protect the CITY from loss.
- T. All patient account numbers must be cross referenced with the KWFD incident number.
- U. Ensure that all required documentation and agreements with payers (e.g. Medicare, Medicaid, Tri-Care, etc.) are filed and maintained, and that the CITY is notified of important changes to industry regulations.

- v. Provide periodic training to CITY Emergency Medical Services personnel as requested regarding the gathering of necessary information and proper completion of Patient Care Reports (PCRs).
- w. Download PCRs from the CITY EMS data collection system or any EMS data collection system used by the CITY. Firm must accept electronic data from CITY via a secure network supplied by the firm. The secure data transfer will be electronic in XML, ASCII or any other acceptable electronic data transfer format.
- x. Provide prompt submission of Medicare, Medicaid and Insurance claims after receiving PCRs, which will be the EMS Billing Agency's notice to commence the billing/collection process, including keeping logs confirming all electronic submissions. Secondary insurance provider claims will be submitted after the primary insurance provider has paid. The CITY will monitor for probate and bankruptcy cases for KWFD EMS patients and on receiving Bankruptcy and Probate notice, will submit information with appropriate detail to contractor for filing. The contractor will respond to KWFD requests and post payments/adjustments related to probate and bankruptcy proceedings.
- y. Use up-to-date knowledge and information regarding coding procedures, assigning diagnostic codes and proper preparation of electronic and paper insurance filings to ensure compliance with Federal, State and local regulations.
- z. Guarantee claim follow up and re-bill and work with the insurance companies when applicable. Re-bill indicates that all charges applicable to the service be retrievable in billing type format and/or detailed statement.
- AA. Provide a reconciliation of the number of transports (PCRs) collected with those transmitted to the contractor, and contact the CITY to report any discrepancies.
- BB. Download payment information electronically and provide web access to the CITY for access to ad hoc reports on billing performance.
- CC. Establish a skip tracing process to validate patient information (correct spelling of name, social security #'s, Date of Birth, and mailing address to also include unit/condo #'s), and returned mail/bad addresses.
- DD. Employ extensive internal and external insurance eligibility and demographic sweeps to identify patients in a timely manner to support billing practices.
- EE. Provide a designated, responsive, and professional liaison for patient/payer concerns. Accept responsibility resolution and communication of all EMS consumer complaints and compliments.
- FF. Provide a means for patients to provide billing information, preferably through a secure web site, to allow patients to review their billing information, add insurance information and request corrections to expedite recovery.
- GG. Provide a toll-free phone number to respond to inquiries concerning patient account information.
- HH. Provide all customer-related inquiry services and prepare additional third-party claims or patient payment agreements in accordance with CITY policies. Document interaction between parties.
- II. Provide proper security of confidential information and proper shredding of all disposed materials containing confidential information. Retain appropriate records in accordance with state records retention requirements.

- JJ. Establish working relationships with hospitals to obtain/verify patient insurance and contact information, preferably through electronic, VPN or faxback programs.
- KK. Respond promptly (within one business day) to the CITY, patients, and patient representatives on request for information.
- LL. Participate in face-to-face meeting between CITY personnel and your appropriate personnel on a semi-annual basis (at minimum) to discuss current legislation, trends, hot topics and better business practices.
- MM. Maintain appropriate accounting procedures and provide for reconciling all payments, bank deposits, receivables, billings, patient accounts, adjustments and refunds between the contractor's billing system and CITY records.
- NN. Provide options for payment processing and receipt (i.e.: bank lockbox, other alternatives, etc.)
- OO. Provide the CITY with copies of supporting documentation for refunds to be made by the CITY the month following the payment posting date.
- PP. Provide timely comprehensive reports facilitating all required aspects of monitoring, evaluating, auditing and managing the services monthly. Reports are to include detailed revenue analysis and forecasts on an as needed basis.
- QQ. Provide pre-collection activities on accounts to significantly reduce accounts being turned to an outside collection agency.
- RR. Provide the KWFD or designated collection agency with all unpaid invoices along with the complete processing history once accounts are past due by 180 days or more, or once firm's collection efforts have been exhausted.
- SS. Negotiate and arrange modified payment schedules for individuals unable to pay full amount when billed in accordance with CITY procedures. The will not lower any billed amount without the prior approval of the CITY.
- TT. Provide the CITY with access to all CITY accounts, data and information maintained in the automated system of the contractor including any hardware, software or connection services required and provide initial and then as needed on-site training for EMS administrative staff on the software utilized.
- UU. Develop disaster safeguards and a data recovery plan with innate system and functional redundancy to include processing and patient services.
- VV. Develop a plan for receiving mail, depositing payments, and providing the CITY with payment information for accounts prior to the Contract period.
- WW. Provide copies of all user manuals, system overviews, technical manuals, reports on controls such as internal/external audits or regulatory authority reports when requested to do so by the CITY.
- XX. The EMS Billing Agency must provide an independent third-party audit annually.
- YY. Comply with all applicable federal, state, and local regulations. The proposal should describe recent and planned efforts for compliance with privacy requirements and data transmission. Recent audits by Medicare, Medicaid, or other agencies may be used to document compliance. Please provide experience with CMS

audits and results for the last five years.

ZZ. Compliance with SSAE 16 type 2 is required

AAA. Completion of HIPAA HITECH Audit is required.

BBB. For monthly reconciliation and payment of invoice by the CITY, provide the following:

1. Copies for the previous months Explanation of Benefits (EOBs) for Medicare payments and adjustments processed. Notify KWFD of adjustments made by Medicare and accounts affected.
2. Payments and return items are to be posted same date as bank deposit posting date. All posting should be current and all items reconciled by end of business month. Any irreconcilable items are to be reported timely to the CITY for direction and resolution. All postings should be reconciled with the CITY on a weekly basis.
3. Provide monthly reports specific to CITY requirements.
4. Monthly reports are to be received by the CITY no later than the 15th business day of the following month.

CCC. The EMS Billing Agency shall be responsible for the invoicing, collection, generation of any and all insurance forms and filings, record maintenance reports and postage for the mailing of all said invoices, and forms. The EMS Billing Agency shall provide patients with a comprehensive statement/invoice, and a courtesy return payment envelope. The front of the statement shall describe all charges and payments. The reverse side of the statement shall have clearly marked entry blocks for information needed to file insurance claims.

Article 2. Compensation

As consideration for providing the services enumerated in Article 1, the CITY shall pay the EMS Billing Agency as follows:

2.1 (a) **4.3%** of collection payment, **\$9.00** flat rate for Medicaid claims, which includes compensation for all tasks identified in the EMS Billing Agency's proposal, including, but not limited to, EMS Billing Agency's travel costs (meals and lodging), transportation, fringe benefits, clerical support, salaries, general overhead costs, direct expenses, profit and all other out-of-pocket expenses.

(b) TripTix Automation Software with interface to third party Sunguard® CAD and interface to Emergency Reporting (Client will supply the Sunguard CAD feed), Administrative Reporting System, including five (5) days on-site Client training and implementation services for TripTix (referred heretofore as "TripTix®").

A. In the event of a change of scope, an appropriate decrease or increase in compensation will be authorized in writing.

B. Invoicing will occur monthly based on the percentage of collected funds for the month.

The EMS Billing Agency shall submit collection reports supporting the compensation. The EMS Billing Agency shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

Article 3. Invoicing and Payment

Invoices will be issued by EMS Billing Agency for all work performed under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

Article 4. Obligations of the Consultant

4.1. General

The EMS Billing Agency will serve as CITY’S professional representative under this AGREEMENT, performing EMS billing services for the City of Key West.

4.2. Standard of Care

The standard of care applicable to EMS Billing Agency’s services will be the degree of skill and diligence normally employed by professionals and other related consultants performing the same or similar services at the time said services are performed. The EMS Billing Agency will perform any services not meeting this standard without additional compensation.

4.3. EMS Billing Agency’s Insurance

EMS Billing Agency must be able to comply and provide evidence of the following insurance requirements before any work can begin:

A. Errors and Omissions Liability Insurance in an amount of not less than \$1,000,000 per occurrence/\$1,000,000 aggregate.

B. Employee Dishonesty Coverage in the amount of not less than \$500,000. Coverage shall include:

- Forgery or Alteration;
- Computer Fraud;
- Funds Transfer Fraud;
- Third Party Coverage in favor of the City of Key West.

C. Worker’s Compensation Insurance and Employer’s Liability Insurance:

i. Worker’s Compensation Benefits: Statutory;

ii. Employer’s Liability Insurance:

Bodily Injury by Accident	\$1,000,000	Each	Accident
Bodily Injury by Disease	\$1,000,000	Each	Employee
Bodily Injury by Disease	\$1,000,000	Policy	Limit

4.4 Subcontractors

- A. The EMS Billing Agency may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.
- B. The EMS Billing Agency is as fully responsible to the owner for the acts and omissions of his Sub consultants and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.
- C. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. The Subcontractor shall have the same insurance requirements as the EMS Billing Agency.

4.5 Licenses

The EMS Billing Agency will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt at a cost not to exceed \$103.00.

Article 5. Obligations of the City

5.1. Authorization to Proceed

Authorization to proceed will be considered to be given upon execution of this Agreement by CITY.

5.2. City Furnished Data

The CITY will provide to the EMS Billing Agency all data in the CITY'S possession relating to the EMS Billing Agency's services on the PROJECT including, but not limited to, information on any pre-existing reports. EMS Billing Agency will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

5.3. Access to Facilities and Property

The CITY will make its facilities accessible to EMS Billing Agency as required for EMS Billing Agency's performance of its services and will provide labor and safety equipment as required by EMS Billing Agency for such access. CITY will be responsible for all acts of CITY'S personnel.

5.4. Timely Review

The CITY will examine the EMS Billing Agency's studies, reports, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

5.5. Prompt Notice

The CITY will give prompt written notice to EMS Billing Agency whenever CITY observes or becomes aware of any development that affects the scope or timing of EMS Billing Agency's services, or any defect in the work of the EMS Billing Agency.

5.6 Litigation Assistance

The Scope of Services does not include costs of EMS Billing Agency for required or requested assistance to

support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of EMS Billing Agency by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate agreement.

Article 6. General Legal Provisions

6.1 Agreement Period

The duration of the agreement shall be three (3) years commencing from the effective date of this agreement. The City shall have two (2) one (1) year renewal options upon same terms and conditions contained in this agreement.

6.2. Reuse of Project Documents

Reports, documents, and other deliverables of the EMS Billing Agency whether in hard copy or in electronic form, are instruments of service for the project of the CITY. All documents shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the EMS Billing Agency will be at the CITY's sole risk. Nothing herein shall constitute a waiver of City's sovereign immunity rights, including, but not limited to, those expressed in Section 768.28, Florida Statutes.

6.3 Ownership of Work Product and Inventions

All the work product of EMS Billing Agency in executing a Project under this contract shall become the property of the CITY. The City may use the deliverables solely for the purpose for which they were intended.

6.4 Force Majeure

A. The EMS Billing Agency is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the EMS Billing Agency.

B. In the event of a delay that results in additional costs to the EMS Billing Agency, an appropriate increase in compensation and schedule will be authorized in writing.

6.5 Termination

A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to EMS Billing Agency. No further work will be performed by EMS Billing Agency upon receipt of this notice unless specifically authorized by the Fire Chief of the City of Key West. The Fire Chief may authorize up to a 90-day work down period on accounts received by the EMS Billing Agency prior to the date of the termination.

B. The EMS Billing Agency will be paid for all authorized services performed up to the end of the 90-day work down period. The CITY will not pay for anticipatory profits.

6.6 Suspension, Delay, or Interruption of Work

A. The CITY may suspend, delay, or interrupt the services of the EMS Billing Agency for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay EMS Billing Agency for work performed to date.

An equitable adjustment in the PROJECT'S schedule and EMS Billing Agency's compensation will be made as agreed to by both parties.

B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.7 Third Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the CITY and EMS Billing Agency and has no third-party beneficiaries. EMS Billing Agency's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of EMS Billing Agency. Any unauthorized assignment of related work product shall be void and unenforceable.

6.8 Indemnification

The CITY shall be held harmless against any and all claims for bodily injury, sickness, disease, death, personal injury, damage to property or loss of use of any property or assets resulting therefrom, arising out of or resulting from the performance of the products or from the services for which the CITY is contracting hereunder, provided such is caused in whole or in part by any negligent act or omission of the vendor, or any subcontractor of their agents or employees, or arises from a job related injury.

The vendor agrees to indemnify the CITY and pay the cost of the City's legal defenses, including fees of attorneys as may be selected by the CITY, for all claims described in the hold harmless clause herein. Such payment on behalf of the CITY shall be in addition to any and all other legal remedies available to the CITY and shall not be considered to be the City's exclusive remedy.

It is agreed by the parties hereto that specific consideration has been received by the vendor under this agreement for this hold harmless/indemnification provision.

6.9 Assignment

A. Consultant shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

6.10 Jurisdiction

A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

6.11 Severability and Survival

A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.12 Dispute Resolution

A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.

B. Unless otherwise agreed in writing, the EMS Billing Agency shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the EMS Billing Agency continues to perform, CITY shall continue to make payments in accordance with this Agreement.

6.13 Post Contractual Restriction

This Agreement is contingent upon the execution of Post Contractual Restrictions by Consultant, those subconsultants referred to in Article 4.4(B) above, and those subconsultants approved by the City pursuant to Article 4.4(A) above restricting those persons and entities, as well as the employees of those persons and entities, from representing themselves or clients before the City Commission of the City Key West, the City's agents, boards, and committees on all planning related matters during the period of performance of this Agreement and for the period of one year following final approval of the Evaluation and Appraisal Report Amendments to the Comprehensive Plan. The Post Contractual Restrictions shall be executed simultaneously with this Agreement and shall be in a form acceptable to City.

6.14 Attorney's Fees

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

6.15 HIPAA Business Associate Obligations

Each party agrees to the obligations set forth in the BA Agreement attached hereto as Exhibit A (the "BA Agreement"). Such BA Agreement constitutes the complete and exclusive agreement between the parties with respect to EMS Billing Agency's obligations regarding Protected Health Information, superseding and replacing any and all prior agreements, communications, representations, and understandings (both written and oral) regarding such subject matter; provided, however, that in the event of any additions, modifications or amendments to any statute or regulation including HIPAA or future federal regulations adopted pursuant thereto, then Intermedix and CITY shall promptly enter into negotiations to revise the BA Agreement to reflect such changes. Upon the execution by the parties of a revised BA Agreement (a "Revised BA Agreement"), such Revised BA Agreement will supersede the current BA Agreement in its entirety and such current BA Agreement will no longer be of any force or effect.

(Signatures Page to Follow)

Article 7. Schedules, and Signatures

This AGREEMENT, including its Schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

THE CITY OF KEY WEST

By: Jim Scholl
Jim Scholl, City Manager

Attest: Cheri Smith
Cheri Smith, City Clerk



Dated this 30 day of July, 2018

Advanced Data Processing, Inc., Subsidiary of Intermedix Corporation

By: Budd Williams
President / CEO / CAO

Dated this 18th day of July, 2018

Exhibit A
Business Associate Agreement

This Business Associate Agreement (“BA Agreement”) supplements and is made part of the Underlying Agreement (as defined below).

This BA Agreement is entered into between City of Key West (“Covered Entity”) and Advanced Data Processing, Inc., a subsidiary of Intermedix Corporation, a Delaware Corporation (“Business Associate”), effective as of the Effective Date of the Underlying Agreement.

WHEREAS, Covered Entity and Business Associate have entered into, or plan to enter into, an agreement or other documented arrangement (the “Underlying Agreement”), pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, create and use Protected Health Information (“PHI”) that is confidential under state and federal law; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed by Covered Entity to Business Associate, or collected or created by Business Associate pursuant to the Underlying Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), and the regulations promulgated there under, including, without limitation, the regulations codified at 45 CFR Parts 160 and 164 (“HIPAA Regulations”); the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary of the Department of Health and Human Services (the “Secretary”) (the “HITECH Act”); and other applicable state and federal laws, all as amended from time to time, including as amended by the Final Rule issued by the Secretary on January 17, 2013 titled “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules”; and

WHEREAS, the HIPAA Regulations require Covered Entity to enter into an agreement with Business Associate meeting certain requirements with respect to the Use and Disclosure of PHI, which are met by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. Definitions.

Capitalized terms used herein without definition shall have the meanings ascribed to them in the HIPAA Regulations or the HITECH Act, as applicable unless otherwise defined herein.

2. Obligations of Business Associate.

a. Permitted Uses and Disclosures. Business Associate shall only Use or Disclose PHI for the purposes of (i) performing Business Associate’s obligations under the Underlying Agreement and as permitted by this Agreement; or (ii) as permitted or Required By Law; or (iii) as otherwise permitted by this Agreement. Business Associate shall not Use or further Disclose PHI other than as permitted or required by this Agreement or as Required By Law. Further, Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the HIPAA Regulations or the HITECH Act if so used by Covered Entity, except that Business Associate may Use PHI (i) for the proper management and administration of Business Associate; and (ii) to carry out the legal responsibilities of Business Associate. Business Associate may Disclose PHI for the proper management and administration of Business Associate, to carry out its legal responsibilities or for payment purposes as specified in 45 CFR § 164.506(c)(1) and (3), including but not limited to Disclosure to a business associate on behalf of a covered entity or health care provider for payment purposes of such covered entity or health care provider, with

the expectation that such parties will provide reciprocal assistance to Covered Entity, provided that with respect to any such Disclosure either: (i) the Disclosure is Required By Law; or (ii) for permitted Disclosures when Required By Law, Business Associate shall obtain a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not use and further disclose such PHI except as Required By Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

b. Creation and Use of De-Identified Data. Business Associate may de-identify any and all PHI, provided that any process or mechanism used to de-identify the data meets the requirements of 45 C.F.R 164.514(a)-(b). Business Associate may use or disclose (and permit others to use or disclose) such de-identified data on a perpetual unrestricted basis, but in no case shall Business Associate attempt to run or develop any keys, codes or algorithms that may be used to re-identify the data.

c. Appropriate Safeguards. Business Associate shall implement administrative, physical and technical safeguards that (i) reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity; and (ii) prevent the Use or Disclosure of PHI other than as contemplated by the Underlying Agreement and this Agreement.

d. Compliance with Security Provisions. Business Associate shall: (i) implement and maintain administrative safeguards as required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310 and technical safeguards as required by 45 CFR § 164.312; (ii) implement and document reasonable and appropriate policies and procedures as required by 45 CFR § 164.316; and (iii) be in compliance with all requirements of the HITECH Act related to security and applicable as if Business Associate were a “covered entity,” as such term is defined in HIPAA.

e. Compliance with Privacy Provisions. Business Associate shall only Use and Disclose PHI in compliance with each applicable requirement of 45 CFR § 164.504(e). Business Associate shall comply with all requirements of the HITECH Act related to privacy and applicable as if Business Associate were a “covered entity,” as such term is defined in HIPAA. To the extent Business Associate is to carry out one or more of Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

f. Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable and mandated by law, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

g. Encryption. To facilitate Business Associate’s compliance with this Agreement and to assure adequate data security, Covered Entity agrees that all PHI provided or transmitted to Business Associate pursuant to the Underlying Agreement shall be provided or transmitted in a manner which renders such PHI unusable, unreadable or indecipherable to unauthorized persons, through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of the HITECH Act. Covered Entity acknowledges that failure to do so could contribute to or permit a Breach requiring patient notification under the HITECH Act and further agrees that Business Associate shall have no liability for any Breach caused by such failure.

3. Reporting.

a. Security Incidents and/or Unauthorized Use or Disclosure. Business Associate shall report to Covered Entity a successful Security Incident or any Use and/or Disclosure of PHI other than as provided for by this Agreement or permitted by applicable law within a reasonable time of becoming aware of such Security Incident and/or unauthorized Use or Disclosure (but not later than ten (10) days thereafter), in accordance with the notice provisions set forth herein. Business Associate shall take (i) prompt action to cure any such deficiencies as reasonably requested by Covered Entity, and (ii) any action pertaining to such Security Incident and/or unauthorized Use or Disclosure required by applicable federal and state laws and regulations. If such successful Security Incident or unauthorized Use or Disclosure results in a Breach as defined in the HITECH Act, then

Covered Entity shall comply with the requirements of Section 3.b below. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents as defined herein. "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

b. Breach of Unsecured PHI. The provisions of this Section 3.b are effective with respect to the Discovery of a Breach of Unsecured PHI occurring on or after September 23, 2009. With respect to any unauthorized acquisition, access, Use or Disclosure of Covered Entity's PHI by Business Associate, its agents or subcontractors, Business Associate shall (i) investigate such unauthorized acquisition, access, Use or Disclosure; (ii) determine whether such unauthorized acquisition, access, Use or Disclosure constitutes a reportable Breach under the HITECH Act; and (iii) document and retain its findings under clauses (i) and (ii). If Business Associate Discovers that a reportable Breach has occurred, Business Associate shall notify Covered Entity of such reportable Breach in writing within thirty (30) days of the date Business Associate Discovers such Breach. Business Associate shall be deemed to have discovered a Breach as of the first day that the Breach is either known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach, or by exercising reasonable diligence should have been known to Business Associate or any of its employees, officers or agents, other than the person who committed the Breach. To the extent the information is available to Business Associate, Business Associate's written notice shall include the information required by 45 CFR § 164.410(c). Business Associate shall promptly supplement the written report with additional information regarding the Breach as it obtains such information. Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HITECH Act with respect to such Breach.

4. Business Associate's Agents. To the extent that Business Associate uses one or more subcontractors or agents to provide services under the Underlying Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate shall sign an agreement with such subcontractors or agents containing substantially the same provisions as this Agreement.

5. Rights of Individuals.

a. Access to PHI. Within ten (10) days of receipt of a request by Covered Entity, Business Associate shall make PHI maintained in a Designated Record Set available to Covered Entity or, as directed by Covered Entity, to an Individual to enable Covered Entity to fulfill its obligations under 45 CFR § 164.524. Subject to Section 5.b below, (i) in the event that any Individual requests access to PHI directly from Business Associate in connection with a routine billing inquiry, Business Associate shall directly respond to such request in compliance with 45 CFR § 164.524; and (ii) in the event such request appears to be for a purpose other than a routine billing inquiry, Business Associate shall forward a copy of such request to Covered Entity and shall fully cooperate with Covered Entity in responding to such request. In either case, a denial of access to requested PHI shall not be made without the prior written consent of Covered Entity.

b. Access to Electronic Health Records. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity with respect to PHI, then, to the extent an Individual has the right to request a copy of the PHI maintained in such Electronic Health Record pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such Individual with a copy of the information contained in such Electronic Health Record in an electronic format and, if the Individual so chooses, transmit such copy directly to an entity or person designated by the Individual. Business Associate may charge a fee to the Individual for providing a copy of such information, but such fee may not exceed Business Associate's labor costs in responding to the request for the copy. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were the "covered entity," as such term is defined in HIPAA. At Covered Entity's request, Business Associate shall provide Covered Entity with a copy of an Individual's PHI maintained in an Electronic Health Record in an electronic format and in a time and manner designated by Covered Entity in order for Covered Entity to comply with 45 CFR § 164.524, as amended by the HITECH Act.

c. Amendment of PHI. Business Associate agrees to make any amendment(s) to PHI in a Designated Record

Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

d. Accounting Rights. This Section 5.d is subject to Section 5.e below. Business Associate shall make available to Covered Entity, in response to a request from an Individual, information required for an accounting of disclosures of PHI with respect to the Individual, in accordance with 45 CFR § 164.528, incorporating exceptions to such accounting designated under such regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the HIPAA Regulations. Business Associate shall provide such information as is necessary to provide an accounting within ten (10) days of Covered Entity's request. Such accounting must be provided without cost to the Individual or to Covered Entity if it is the first accounting requested by an Individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs Covered Entity and Covered Entity informs the Individual in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.

e. Accounting of Disclosures of Electronic Health Records. The provisions of this Section 5.e shall be effective on the date specified in the HITECH Act. If Business Associate is deemed to use or maintain an Electronic Health Record on behalf of Covered Entity, then, in addition to complying with the requirements set forth in Section 5.d above, Business Associate shall maintain an accounting of any Disclosures made through such Electronic Health Record for Treatment, Payment and Health Care Operations, as applicable. Such accounting shall comply with the requirements of the HITECH Act. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by Covered Entity and in compliance with the HITECH Act. Alternatively, if Covered Entity responds to an Individual's request for an accounting of Disclosures made through an Electronic Health Record by providing the requesting Individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting Individual in the time and manner specified by the HITECH Act.

f. Agreement to Restrict Disclosure. If Covered Entity is required to comply with a restriction on the Disclosure of PHI pursuant to Section 13405 of the HITECH Act, then Covered Entity shall, to the extent necessary to comply with such restriction, provide written notice to Business Associate of the name of the Individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not Disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law. Covered Entity shall also notify Business Associate of any other restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

6. Remuneration and Marketing.

a. Remuneration for PHI. This Section 6.a shall be effective with respect to exchanges of PHI occurring six (6) months after the date of the promulgation of final regulations implementing the provisions of Section 13405(d) of the HITECH Act. On and after such date, Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by the HITECH Act.

b. Limitations on Use of PHI for Marketing Purposes. Business Associate shall not Use or Disclose PHI for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless such communication: (1) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 CFR § 164.501, and (2) complies with the requirements of subparagraphs (A), (B) or (C) of Section 13406(a)(2) of the HITECH Act, and implementing regulations or guidance that may be issued or amended from time to time. Covered Entity agrees to assist Business Associate in determining if the foregoing requirements are met with respect to any such marketing communication.

7. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Regulations and the HITECH Act. Except to the extent prohibited by law, Business

Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

8. Minimum Necessary. To the extent required by the HITECH Act, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes “minimum necessary” for purposes of the HIPAA Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.

9. State Privacy Laws. Business Associate shall comply with state laws to extent that such state privacy laws are not preempted by HIPAA or the HITECH Act.

10. Termination.

a. Breach by Business Associate. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate’s obligations under this Agreement, then Covered Entity shall promptly notify Business Associate. With respect to such breach or violation, Business Associate shall take reasonable steps to cure such breach or end such violation, if possible. If such steps are either not possible or are unsuccessful, upon written notice to Business Associate, Covered Entity may terminate its relationship with Business Associate.

b. Breach by Covered Entity. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity’s obligations under this Agreement, then Business Associate shall promptly notify Covered Entity. With respect to such breach or violation, Covered Entity shall take reasonable steps to cure such breach or end such violation, if possible. If such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, Business Entity may terminate its relationship with Covered Entity.

c. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall either return or destroy all PHI, as requested by Covered Entity, that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, such PHI shall be returned in a mutually agreed upon format and timeframe. If Business Associate reasonably determines that return or destruction is not feasible, Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible. If Business Associate is asked to destroy the PHI, Business Associate shall destroy PHI in a manner that renders the PHI unusable, unreadable or indecipherable to unauthorized persons as specified in the HITECH Act.

11. Amendment. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement any new or modified standards or requirements of HIPAA, the HIPAA Regulations, the HITECH Act and other applicable laws relating to the security or confidentiality of PHI. Upon the request of Covered Entity, Business Associate agrees to promptly enter into negotiation concerning the terms of an amendment to this Agreement incorporating any such changes.

12. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Effect on Underlying Agreement. In the event of any conflict between this Agreement and the Underlying Agreement, the terms of this Agreement shall control.

14. Survival. The provisions of this Agreement shall survive the termination or expiration of the Underlying Agreement.

15. Interpretation. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA Regulations and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with such laws.

16. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

17. Notices. All notices required or permitted under this Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission, e-mail or personal or courier delivery:

If to Covered Entity: City of Key West
1600 North Roosevelt Blvd.
Key West, FL 33040
Attn: CITY MANAGER
Telephone no: 305 - 809 - 3888
Facsimile no: 305 - 809 - 3886

If to Business Associate: Intermedix Corporation
6451 N. Federal Highway, Suite 1000
Ft. Lauderdale, FL 33308
Attn: Chief Compliance Officer
Telephone no: 954-308-8700
Facsimile no: 954-308-8725