

**CONTRACT TO PROVIDE CONSULTING SERVICES
FOR TELECOMMUNICATIONS COST RECOVERY
AND/OR FUTURE SAVINGS TO THE CITY OF MARGATE, FLORIDA.**

THIS CONTRACT, entered into this _____ day of _____, 2016, by and between Florida League of Cities, Inc. a Florida corporation (hereinafter referred to as “FLC”) and the City of Margate, Florida, a Municipal Corporation organized under the laws of the State of Florida (hereinafter referred to “the City”).

WHEREAS, the City desires to engage FLC and its agents to review telecommunications vendor billings for the purpose of disclosing overcharges due to billing errors and/or identifying cost-saving strategies for the purpose of securing future savings,

NOW THEREFORE, the parties hereto mutually agree as follows:

1. **Employment of FLC.** The City agrees to engage FLC and FLC agrees to perform the services as outlined herein. When used in this contract, the term “FLC” includes FLC and its agents, officers, subcontractors, and employees. For purposes of this contract, subcontractors shall mean CostChecks Auditing Services, LLC (CostChecks). It is understood that FLC may utilize one or more third parties to assist in providing such services.
2. **Scope of Services.** FLC will review the City’s telecommunications billings to find sensible ways to reduce costs, such as identifying past and/or current overcharges, or proposing cost-savings actions or strategies to the City. Upon finding any overcharges, FLC will work with the City, providing information as needed, to help the City secure from the vendor a reasonable and appropriate refund or credit for past overcharges, as well as a correction of current charges.

During the course of its work, FLC will use those audit measures it deems necessary and appropriate under the circumstances. The parties agree that a review by FLC, however diligent that review may be, cannot serve as a guarantee that all billing errors have been discovered or that all possible cost-saving strategies have been uncovered and proposed to the City. The City and FLC therefore agree that FLC will not be liable for undiscovered billing errors or cost-saving strategies.

A signed Letter of Authorization must accompany this Agreement on the city’s letterhead, which enables FLC/CostChecks to obtain vendor records pertaining to this engagement.

3. **Time of Performance.** FLC’s services will commence within 30 days of notice to proceed. Initial performance of service usually consists of filing Letters of Authorization with appropriate vendors and obtaining Customer Service Records, when necessary. FLC will perform and complete its services as expeditiously as reasonably possible under the circumstances. Both parties recognize that delays by vendors and other obstacles may, from time to time, impede FLC from completing its services as quickly as it would intend. The term of this agreement will be a minimum of 18 months from the date of acceptance and execution of the contract by the FLC. At the end of that minimum term the agreement will continue but may be cancelled by either party upon thirty (30) days of written notice.

4. **Confidentiality Agreement.** The City and FLC agree that, if required, they will enter into a mutually acceptable confidentiality agreement protecting the confidentiality of certain proprietary information to the extent allowed by Florida Law and the City's charter.
5. **Compensation.** The City agrees to pay FLC forty five percent (45%) of any refund or credit it receives as a result of FLC's actions initiated or recommended during the term of this Contract. The fee for refunds or credits is payable upon invoicing by FLC, subsequent to the City's receipt of the refund or credit.

The City also agrees to pay each quarter for twelve (12) months forty five percent (45%) of any monthly savings achieved as a result of FLC's actions, or the implementation of any FLC proposal. The twelve (12) month billing period referenced hereinabove shall begin the first day of a monthly telecommunications billing cycle in which the City has a documented monthly savings as a result of FLC actions or implementation of any FLC proposal. Such savings shall be clearly documented in writing and may include, but are not limited to, cost reductions resulting from the correction of billing errors, rate or classification changes, changes in contract terms, changes in network configuration, and elimination of unwanted services.

If the City incurs expenses in implementing any FLC proposal, the City will not be required to pay fees owed to FLC until the City first achieves an accrued cost-savings equal to the implementation costs. Thereafter, the twelve (12) month billing period referenced hereinabove shall begin the first day of the monthly telecommunications billing cycle in which the savings is realized by the City.

To avoid unnecessary bookkeeping, and for the mutual convenience of the City and FLC, any item of future savings which generates fees of twelve hundred dollars (\$1,200.00) or less will be payable in its entirety at the beginning of the 12-month period rather than in quarterly increments throughout the 12-month term.

The proposals presented to the City by FLC are meant to be sensible and beneficial. The parties agree that the City is in the best position to judge those qualities of a cost-saving proposal. Accordingly, the City is under absolutely no obligation to implement any proposal submitted by FLC and agrees to accept or reject any proposal within a reasonable time (not to exceed 45 days). If the City rejects any proposal, the City owes no fee for any savings that would have resulted from the rejected proposal. If, however, the City implements the rejected proposal within eighteen (18) months, it agrees to pay FLC its full fee as stated above. Such rejection must be in writing, and the date of such rejection constitutes the initiation of the eighteen (18) month time period.

Any debits or charges to the City for past under billings and/or any increases in future costs resulting from current or past under billings will not be deducted from any fee as defined above.

During the initial 18 month period of this agreement, should any in-house review, city action, or any other vendor, business, or entity conduct a similar analysis or audit, FLC is still entitled to the above-stated fees for refunds, credits, or cost-savings realized by the city.

Upon termination of this contract, if any amounts owing to FLC remain unpaid, or if an issue initiated or recommended by FLC remains unresolved, the City agrees to compensate FLC as described above with regard to the unpaid amounts, as well as to the resolution of such issue. This

provision is intended to allow for unavoidable delays caused either by the City, telecom vendors, or regulatory and legal agencies which are outside of FLC's control.

6. **Method of payment.** FLC will compute fees as outlined in this contract and submit invoices to the City for the correct amount. The City agrees to pay all correct invoices according to the Local Government Prompt Payment Act.
7. **Changes.** Any changes in this contract must be incorporated into a written amendment and signed by both parties.
8. **Principal-Independent Contractor.** The relationship of FLC to the City shall be that of an independent contractor. No other employer-employee relationship between the parties is created by this contract. By entering into this contract with the City, FLC and the City acknowledge that FLC will, in the performance of its duties and under this contract, be acting as an independent contractor and that no officer, independent contractor or employee of FLC or the City will be for any purpose an employee of the other and that no officer, independent contractor, employee of FLC is entitled to any of the benefits and privileges of a city employee or officer under any provision of Florida law.
9. **Services and Materials to be Furnished by the City.** The City agrees to make available to FLC copies of bills, contracts, and other such materials as may be reasonably requested to carry out the duties of this contract in an excellent manner. FLC may make reasonable requests for a temporary work space or for the periodic assistance of an employee. Since the City wishes for FLC to be successful in its efforts, it agrees to fulfill such requests to the extent it can reasonably do so.
10. **Indemnification.** Each party shall be responsible, in accordance with Florida law, for its own acts, and will be responsible for all damages, costs, fees, and expenses which arise out of the performance of this contract and which are due to that party's own negligence, tortious acts and other unlawful conduct and the negligence, tortious acts and other unlawful conduct of its respective agents, officers, and employees. In the absence of negligence, tortious acts and other unlawful conduct in FLC's performance hereunder, the City shall, to the extent permitted under Florida law, defend, indemnify and hold FLC free and harmless from and against any claims, demands, or action brought by third parties which are related in any way to the City's implementation of FLC proposals.
11. **Limitations of Liability.** The City agrees that FLC's total aggregate limit of liability to the City hereunder (whether contract, statutory, in tort, or otherwise) for damages on any one or more or all claims (regardless of the number of different or other claims, claimants, or occurrences) shall not exceed the total of professional fees paid under this contract. The City agrees that FLC shall not be liable to the City for any indirect, incidental, special, or consequential damages, any lost profits or any claim or demand against the City by any other party, arising out of or in connection with the performance of services hereunder.
12. **Matters to be Disregarded.** The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.
13. **Completeness of Contract.** This contract and any additional or supplementary document or

documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto.

14. **Applicable law.** This contract shall be governed by and construed in accordance with the laws of the State of Florida.

15. **Notices.** Any notices, bills, invoices, or reports required by this contract shall be sufficient if sent by the parties in the United States mail, postage paid, to the address shown below. In addition, a summary report containing an overview of the project shall be sent to the Chief Administrative Officer of the City if he/she is different from the contact below.

Mr. Douglas E. Smith
City Manager
City of Margate, Florida
5790 Margate Blvd.
Margate, FL 33063

Mr. Ken Small
Financial Technical Assistance Manager
Florida League of Cities
P.O. Box 1757
Tallahassee, FL 32302-1757

16. **Venue.** This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida.

17. **Waiver of Jury Trial.** The parties to this agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

18. **Retention of Records & Right To Access Clause.** In accordance with Florida Statute, 119.0701 - Contracts; public records, the vendor shall keep, maintain and make available all records, regardless of format, including but not limited to finance records, statistical records, correspondence, and supporting documents pertinent to this contract for a period determined by the nature of the document, pursuant to state and federal records retention and disposition requirements, and after termination of this contract; provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law ; meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If a contractor does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

IN WITNESS WHEREOF, the City and FLC have executed this contract as of the date first written above.

CITY OF MARGATE

Tommy Ruzzano, Mayor
____ day of _____, 2016

ATTEST:

Joseph J. Kavanagh, City Clerk
____ day of _____, 2016

Douglas E. Smith, City Manager
____ day of _____, 2016

APPROVED AS TO FORM:

Eugene M. Steinfeld, City Attorney
____ day of _____, 2016

FLORIDA LEAGUE OF CITIES, INC.
A Florida Not-for-Profit Corporation

By: _____