



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

Date: September 8, 2020

To: Mark F. Miller, City Manager



From: Robert J. Bruner, Assistant City Manager  
Rob Maleszyk, Chief Financial Officer  
Lisa Burnham, Controller  
M. Aileen Dickson, City Clerk  
MaryBeth Murz, Purchasing Manager

Subject: Request for Affirmation of Emergency Purchase and Agreement – Kent Communications, Inc. (KCI) for TrackMIBallot Service

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### History

The United States Postal Service (USPS) is experiencing internal upheaval and service delays that have been the subject of a constant stream of news stories and investigations by elected officials. In the weeks leading up to the August 4<sup>th</sup> Primary Election, and since then, the delays in mail delivery times have caused election officials to seek out remedies for voters such as drop boxes, and encouraging voters to pick up their ballots in-person.

The City Clerk's Office has addressed the issue of mail delays with new drop boxes including expanding our number of boxes from 2 to 4, and placing 2 of the drop boxes at the Troy Public Library and the Troy Community Center. We have also scheduled absentee ballot pick-up events on Saturday and Sunday, September 26 and 27, from noon to 4:00 PM.

Another tool we can use to help mitigate the issues with USPS delivery is a service called TrackMIBallot, created by Kent Communications, Inc. (KCI) from Grand Rapids, MI. KCI is a company that specializes in mail management services, along with design and printing. Through their agreement with the USPS, they are provided with real-time updates from the scanning machines within the USPS mail processing plants.

TrackMIBallot provides real-time tracking of absentee ballots throughout the USPS system from the City Clerk's Office to the voter, then of the return envelope from the voter back to the City Clerk's Office. The service will provide voters whose email addresses or cell phone numbers are in the Qualified Voter File with a link where those voters can track their ballots directly. The City Clerk's Office will also be able to track any ballot within the USPS system. TrackMIBallot was successfully used during the August election by the City of Lansing and the City of Walker. Many more municipalities are signing up for the service for the November election including Ann Arbor and Huntington Woods. Recently, the Michigan Bureau of Elections recommended that election officials use a ballot tracking service because of the mail delays expected to affect the mailing of absentee ballots for the November 3<sup>rd</sup> election.



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## **CITY COUNCIL AGENDA ITEM**

Since TrackMIBallot provides the City Clerk's Office with information about a ballot's location within the USPS system, we will be able to locate ballots "lost in the mail". Every election, a percentage of ballots don't arrive at their destination, and the City Clerk's Office is unable to provide voters with any help in figuring out what happened to them. There were hundreds of ballots during the August 4<sup>th</sup> election season that were never received by the voters. With TrackMIBallot in use for the November election, we will be able to see where the ballots are, and work with the USPS to get them moving on to their destinations. With 30,000 absentee ballots expected to be issued, the City Clerk's Office needs to utilize this secure, intuitive service to prevent hundreds of ballots being lost again.

Due to the time constraints involved with preparing absentee ballots for mailing, and in order to have the TrackMIBallot service ready for when the first shipment of ballots go to the USPS on September 28<sup>th</sup>, the City Manager authorized the emergency purchase of the TrackMIBallot service and authorized the City Clerk to sign the agreement with Kent Communications, Inc. The City Attorney reviewed the agreement before the City Clerk signed it.

### **Purchasing**

- City Charter Section 12.1 – Purchase and Sale of Property authorizes the City Manager to make necessary purchases prior to Council approval in a declared emergency, which shall be affirmed by City Council at the next regularly scheduled Council meeting.
- The annual cost for the TrackMIBallot is \$250; plus, \$0.25 for each ballot mailed/tracked through the USPS system. The cost for the November 3, 2020 election is estimated at \$7500. Since the fee is per-ballot mailed, the cost per election will vary depending on the number of absentee ballots we issue.

### **Financial**

- The cost for TrackMIBallot associated with the November 3<sup>rd</sup> election is reimbursable through the CARES Act, or through the Center for Tech and Civic Life COVID-19 Response Grant. City Management will submit the required documents for reimbursement.
- Funds for future elections will be budgeted in the Elections account.

### **Recommendation**

City Management requests that the City Manager's authorization of an emergency purchase of the TrackMIBallot service for the November 3, 2020 General Election, and the signing of the agreement with Kent Communications, Inc., be affirmed by City Council.

### **Legal Review**

This item was submitted to the City Attorney for review pursuant to City Charter Section 3.17.

**Kent Communications, Inc.**  
**Mailing Services Agreement (Ballot)**

This Mailing Services Agreement ("Agreement") is made this 3 day of September, 2020 between Kent Communications, Inc. ("KCI"), whose address is 3901 East Paris SE, Grand Rapids, Michigan 49512, and City of Troy (the "Municipality"), whose address is 500 W. Big Beaver Rd. Troy MI 48084.

**Introduction**

- A. KCI is in the business of providing postal optimization for its clients. This includes mail pickup and direct delivery to the United States Postal Service ("USPS"), and allows KCI to presort mail, barcode mail, and maximize timely and accurate delivery by the USPS and minimize postal costs by utilizing appropriate presort and nonprofit discounts.
- B. The Municipality mails certain absent voter ballots to persons requesting these ballots, all pursuant to Michigan statutes.
- C. KCI has developed a "TrackMIBallot" program for mailing and tracking absent voter ballots, and proposes to provide mailing services to the Municipality for the absent voter ballots pursuant to the description of services and the terms in this Agreement.

**Agreement**

1. **Services:** KCI will produce and provide to the Municipality return labels (with barcodes) specific to the Municipality's precincts and ballot number. The Municipality Clerk will place the appropriate label over the current return address barcode on the return envelope for the ballot to be mailed by the voter, which will provide for USPS tracking of that ballot-envelope once mailed by the voter. The ballot and return envelope are placed in a sealed envelope by the clerk and appropriately addressed to the voter by the clerk. All ballots to be mailed that day will be delivered to KCI (or picked up by KCI if agreed herein).

KCI will sort these envelopes and place a barcode on the outer envelope to allow USPS tracking of the mailed envelope to the voter. KCI will deliver these envelopes directly to the USPS within 12 hours of receipt if the envelopes are received by KCI during normal business hours. KCI will provide to the Municipality a tracking portal for round trip tracking of each of the envelopes (that sent to the voter, and the return ballot).

The sorting and barcode allow the Municipality to qualify for USPS mailing discounts and nonprofit mailing discounts, all pursuant to the USPS rate structure.

KCI will also send a text and an email to the voter's phone and email address of record on the Qualified Voter File ("QVF") file. The communication will contain a Voter URL address on the internet allowing the voter to track their incoming ballot envelope and outgoing ballot envelope. To take advantage of the email notification, Municipality will provide KCI with the Absent Voter List, a standard file from the QVF system containing voter ID, phone number and email address, each time ballots are mailed.

2. **Payment for Services.** The Municipality will pay for all postage charges by the USPS to KCI for the mailings. In addition, the Municipality will pay to KCI \$0.25 for each envelope processed and mailed by KCI, \$0.05 for metering (if needed) and a \$250 per election setup fee. KCI will invoice its service fees weekly. These invoices are payable within 30 days of the date of the invoice. KCI reserves the right to require advance payment of postage fees upon advance written notice to the Municipality.
3. **Postage.** Nonprofit postage will be billed at the MAADC Presort rate of \$0.184 for each envelope mailed. First Class Postage will be billed at \$0.46 for each envelope mailed.
4. **Term.** This Agreement shall remain in effect from the date this Agreement is signed until 10 days written notice of termination is provided from one party to the other.
5. **Pickup and Delivery Terms:**
6. **General Terms.** This Agreement is subject to the attached General Terms, which are incorporated herein.

WHEREFORE, the parties have executed this Agreement this 3 day of September 2020.

Kent Communications, Inc.

Brian Quist

By: Brian Quist, president

Municipality

City of Troy

M. Aileen Dickson

M. Aileen Dickson, City Clerk

**Kent Communications, Inc.**  
**Mailing Services Agreement (Ballot)**

**General Terms and Conditions**

1. **Rejects and Returns.** Envelopes that are rejected by a machine may be delayed in processing by 24 hours. If mail is returned as undeliverable, or is damaged in processing, KCI will return such mail to the Municipality within 3 business days of receipt or damage.

2. **Scans and Tracking.** An unmatched scan can occur when an envelope with a barcode requests data where no tracking has been created. This can occur by machine error, unreadable codes or other causes. Additionally, tracking relies on the USPS scanning and reporting. KCI disclaims any liability for errors in tracking or scanning the mail.

KCI expressly disclaims all warranties of any kind or nature concerning scanning or tracking services whether express or implied, including without limitation, any warranty of merchantability, quality, informational content, accuracy, or fitness for your specific purpose. We expressly disclaim any warranties that may be implied from usage of trade, course of dealing, or course of performance. Access to the information portal via the Internet is "as is" and "as available" and KCI provides no warranties of any kind regarding the availability, reliability or integrity of the Internet, or any data transmitted via the Internet.

3. **Envelopes.** KCI is not responsible for the contents of any ballot envelopes or the accuracy or integrity of any addresses placed on the envelopes.

4. **Payment.** The Municipality agrees to review all invoices promptly. Any objection to an invoice is waived if KCI is not notified thereof within 6 months of the invoice date. If the Municipality fails to timely pay KCI, KCI may, at its option, along with all other remedies available to KCI, suspend performance until payment is received. A service fee of 1% per month shall accrue on any outstanding balance. The Municipality shall pay all costs and expenses, including actual attorney's fees, incurred by KCI in enforcing the provisions of this Agreement.

5. **Office Hours:** KCI's office hours are 8:00 a.m. to 7:00 p.m. Monday through Friday, excepting legal holidays. All mail provided to KCI outside of KCI's office hours will be processed on the next business day.

6. **Records.** KCI will provide weekly reports to the Municipality regarding items mailed on its behalf. Tracking data will be maintained for 90 days. KCI agrees to maintain billing records for two years.

7. **Municipality Responsibilities.** The Municipality will only use envelope sizes preapproved by KCI and in compliance with all USPS regulations. All mail will be addressed with clear printing and in compliance with all USPS regulations and guidelines. The Municipality agrees to promptly execute all documents required by or for the USPS.

8. **Force Majeure.** Except as otherwise provided herein, KCI shall not be liable for any delay in, or failure of performance of, a requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided KCI exercises all reasonable due diligence to perform. Force majeure is defined as weather, acts of God, war, strike, fires, explosions, machinery breakdown, electrical interruption, riot, pandemic, order of public authority, or other causes that are beyond the reasonable control of KCI and that by exercise of due foresight could not reasonably have been expected to avoid, and which, by the exercise of reasonable diligence, such party is unable to overcome.

9. **Confidential Information.** KCI acknowledges that the QVF and Absent Voter List may contain confidential information. KCI agrees to use such information only for the purposes set out in this agreement and except for such purposes KCI will not, directly or indirectly, use, take commercial or proprietary advantage of or profit from such information. KCI will take reasonable efforts to protect such information.

10. **Indemnification.** The Municipality agrees to indemnify, defend and hold harmless KCI from and against and all charges, claims (including claims of third parties), fines, penalties, obligations, causes of action, damages, losses, expenses, charges, costs, or other liabilities (including attorney's fees), arising out of: (i) the Municipality's breach of any obligations or covenants arising under this Agreement; or (ii) the makeup or content of any mail or other items delivered to KCI by the Municipality. KCI agrees to indemnify,

defend and hold harmless the Municipality from and against and all charges, claims (including claims of third parties), fines, penalties, obligations, causes of action, damages, losses, expenses, charges, costs, or other liabilities (including attorney's fees), arising out of KCI's breach of any obligations or covenants of KCI arising under this Agreement.

11. **Limitation on Liability.** KCI's liability under this Agreement is limited to the limits of the liability insurance maintained by KCI. For occurrences not so insured, the liability of KCI under this Agreement shall not exceed \$25,000 in the aggregate. The parties agree that these limits of liability shall survive and continue in full force and effect despite any termination or expiration of this Agreement. Under no circumstances shall KCI be otherwise liable to the Municipality or any other person for any consequential, incidental, economic, indirect, general or specific damages arising out of this agreement.

12. **Taxes.** Any amounts due for taxes and assessments will be added to the Municipality's invoice and are the responsibility of the Municipality. No tax exemption will be granted unless official proof of exemption is on file with KCI. If, after the Municipality has paid the invoice, it is determined that more tax is due, the Municipality shall promptly remit the required taxes to the taxing authority or immediately reimburse KCI for any additional taxes paid by KCI.

13. **Survival.** Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

14. **General Provisions.**

A. **No Assignment.** No rights under this Agreement may be assigned or otherwise transferred by the Municipality, in whole or in part, whether directly or by operation of law, without the prior written consent of the other party.

B. **Counterparts.** This Agreement may be executed and delivered in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A facsimile or other electronic copy of a signature shall be deemed an original for purposes of this Agreement.

C. **Severability.** If any one or more of the covenants, agreements, provisions or terms of this

Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement, and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

D. **Cumulative Rights.** All rights and remedies specified in this Agreement are cumulative and are in addition to, not in limitation of, any rights or remedies the parties may have at law, in equity, or otherwise, and all such rights and remedies may be exercised singularly and concurrently.

E. **Construction.** This Agreement is the joint product of the parties, and any ambiguity herein shall not be construed against the drafter, but rather the terms hereof shall be given a reasonable interpretation as if each party had in fact drafted the Agreement.

F. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and must be served by hand delivery, or by a nationally recognized overnight delivery service, or by express mail or certified mail return receipt requested. Notice shall be effective on tender of delivery at the notice address during ordinary business hours. Any communication given in any other manner shall be effective only if and when received by the party notified. For purposes of this section, the notice addresses of the parties shall be as set forth at the beginning of this Agreement. Any party may change the address to which such communications are to be sent by notice to the other party as provided in this Agreement.

G. **Governing Law.** This Agreement shall be deemed to have been executed and entered into in the State of Michigan and this Agreement, and its formation, operation, and performance shall be governed, construed, performed, and enforced in accordance with the substantive laws of Michigan without regard to its conflicts of law principles.

H. **Waiver.** Any waiver on the part of either party hereto of any right or interest shall not imply the waiver of any other right or interest, or any subsequent waiver.

I. **Entire Agreement.** This Agreement sets forth the entire Agreement and understanding between the parties on the subject matter hereof, and supersedes all prior agreements related thereto between the parties.

This Agreement can only be modified by a written amendment signed by the Parties.