

AGREEMENT FOR SERVICES
Between
Burke Asset Holding LLP dba Direct Mail Partners
And
City of Texas City

This Agreement ("Agreement") is made effective the ___ day of _____, 20___, by and between Burke Asset Partnership, LLP, dba Direct Mail Partners ("DMP"), having its principle place of business at 1505 Wallace Drive, Suite 154, Carrollton, Texas 75006, and City of Texas City ("THE CITY") having its principle place of business at 1801 9th Avenue North, Texas City, TX 77590.

WHEREAS, THE CITY wishes to procure services from DMP relating to the data file handling, computer processing, printing, mail shop assembly, mail presort processing, and/or related services; and

WHEREAS, DMP provides services needed by THE CITY for the production and distribution of business related documents; and

WHEREAS, DMP has or may develop specialized software or customize existing software for the purpose of servicing THE CITY;

NOW THEREFORE, in consideration of the mutual covenants and promises in this Agreement, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Agreement, the terms set forth in this Section 1 shall have the following meanings:

"Party" or "Parties" means the party or parties to this Agreement.

"Person" means any individual, corporation, partnership, firm, joint venture, association, joint stock company, trust, unincorporated organization, regulatory body, government or any group or political subdivision thereof, or other entity.

"Third Party" means a person who is not a Party to this Agreement.

SECTION 2. TERM AND TERMINATION

2.1 Term. The initial term of the Agreement shall commence on the date first written above and shall continue for a period of 12 months, and thereafter shall be automatically extended on an annual basis ("Renewal Term(s)") unless, during the period of the Renewal Terms, either party provides thirty (30) days prior written notice of intent to terminate, or unless terminated sooner

as provided below. The Initial Term and Renewal Term(s) may be referred to collectively as the "Agreement Term".

2.2 Termination for Default. If either Party materially breaches this Agreement, and if such breach continues for a period of ten (10) days after written notice to the defaulting party describing the default, then the non-defaulting party may terminate this Agreement immediately upon written notice to the defaulting party.

2.3 Effect of Termination. In the event this Agreement is terminated for any reason, DMP shall deliver all products and services requested by THE CITY through the termination date, provided that THE CITY is current on all outstanding invoices and THE CITY pays all additional fees upon performance and delivery of the balance of the requested products and services. Unless mutually agreed to otherwise, upon termination, both parties agree to return, or warrant in writing that they have deleted or destroyed any information or data that has been exchanged as provided for in this Agreement. Preprinted materials ordered on behalf of the THE CITY but not used at the time of termination will be invoiced and billed to the THE CITY at the current contractual per piece price. If THE CITY wants the material, THE CITY will be responsible for shipping charges or transportation charges to return to THE CITY or upon approval by THE CITY the materials will be disposed.

SECTION 3. RESPONSIBILITIES

3.1 Production services. DMP will provide the following ongoing services:

- a. Host a secure FTP site for the receipt and posting of THE CITY data and reports;
- b. Receive production data in pdf format via secure FTP;
- c. Print, fold, insert, meter at USPS AADC rate, and mail all utility bills;
- d. Track and report document production on a document by document basis.

3.2 Postage Escrow Account. As is traditional with funding postage, THE CITY will deposit funds with DMP in an amount mutually agreeable to both parties, to be held in escrow by DMP and applied to THE CITY's postage as the postage is incurred. This Postage Escrow Account will be replenished by THE CITY and accounted for by DMP in a manner mutually agreeable to both parties. Upon termination of this agreement, all remaining funds in the Postage Escrow Account will be returned to THE CITY or applied to any remaining balance as directed by THE CITY.

3.3 Billing and Payment. The statement package price includes the data processing, printing, inserting, and mailing of a single invoice printed duplex, black, on one sheet of 8 1/2 x 11 Paper – 24#, white, perforated 3 2/3" from top, and a #10 window envelope printed with return address. Postage is due prior to mailing. DMP's invoicing cycle is monthly with terms net 30.

THE CITY will be billed for products and services as indicated in Attachment 1.

- a. A consolidated invoice and a detailed billing report will be provided to THE CITY by DMP at the end of each billing period.

- b. Invoices are due within 30 days of the date of invoice.
- c. The pricing provided in Attachment 1 will remain in effect for the term of the agreement, with the exception of paper and paper products. Because the pulp wood products industry is subject to short notice price increases, DMP reserves the right to increase prices for paper and paper products as needed to address cost increases, any such increases to occur not more than one time in any six month period, and not more than 5% per occurrence.
- d. THE CITY shall pay all sales and other taxes related to the goods and services provided by DMP unless Exempt.

3.4 Service Level Agreement.

Valid files in the correct format received by midnight will be processed and mailed the next business day.

SECTION 4. CONFIDENTIALITY AND NON-USE

4.1 Confidential Information. Without limitation, the following shall be considered Confidential Information:

Records that may contain non-public information about customers of either Party, including but not limited to information provided by THE CITY to DMP, any personally identifiable financial information; and any lists, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information whether in paper, electronic, or other form; any of the terms or conditions of the Agreement (except in a proceeding to enforce any of the provisions of this Agreement); any confidential or proprietary information or data, either oral or written, pertaining to the any Party or the any Party's customers, except such information as may be in the public domain or publicly available.

4.2 Protection of Confidential Information. Either Party (the "Receiving Party") who has received Confidential Information from the other Party (the "Disclosing Party") will exercise the same level of effort and diligence to secure and protect such Confidential Information as it would use to secure and protect it's own Confidential Information, and will not, without the prior written consent of the Disclosing Party, use, copy, publicize, disclose, or through inaction allow to be disclosed to any Third Party, either directly or indirectly, any of the received Confidential Information, except in accordance with sections 4.4 "Third Party Disclosures" and 4.5 "Disclosures Through Legal Process" below.

4.3 Information Security. Each Party shall at all times administer an information security program that ensures the protection of the other party's Confidential Information. In addition, DMP agrees to comply with the provisions of the Gramm Leach Bliley Act of 1999 (Public Law 106-102) as it relates to the services provided.

4.4 Third Party Disclosures. To the extent a Third Party is provided Confidential Information by the Receiving Party with the knowledge and consent of the Disclosing Party, disclosure of such Confidential Information by such Third Party will not be a breach of this Agreement. DMP may provide Confidential Information to any person or organization not a party to this

Agreement to the extent necessary to obtain products or service from such person or organization required for DMP to perform its duties under this Agreement, provided, however, that such person or organization has entered into a confidentiality and non-use agreement with such person or organization on terms at least as restrictive as those contained in this Agreement. DMP agrees that it will not let anyone use the Confidential Information provided to it by THE CITY for any purpose other than the fulfillment of its obligations under this Agreement. Each party agrees to indemnify the other Party against the disclosure or use of the Confidential Information by any employee, agent, or Third Party retained by that Party to assist in the performance of its duties under this Agreement or to which it discloses any Confidential Information.

4.5 Disclosures Through Legal Process. If either Party is served with a subpoena or other legal process requiring the production or disclosure of any Confidential Information, then that Party, before complying, will immediately notify the Disclosing Party and will use its best efforts to permit the Disclosing Party a reasonable period of time to intervene and contest disclosure or productions.

4.6 Termination for Breach of Confidentiality. If the Receiving Party materially breaches the confidentiality provisions herein, then Disclosing Party shall have the right, but not the obligation to terminate this Agreement immediately, upon written notice.

SECTION 5. OWNERSHIP

5.1 Intellectual Property. Both parties acknowledge and agree that each party has sole and exclusive rights to all of its patents, copyrights, trademarks, confidential technical information, trade secrets, and improvements as defined herein (collectively "Intellectual Property Rights"). Each party shall have the sole and exclusive right, but not the obligation, to seek, pursue, prosecute and maintain all intellectual property protection and government registrations for its own Intellectual Property Rights. Each party agrees that, if necessary, it will cooperate with the other party to obtain and maintain protection of its intellectual property, and waives any and all claims and rights to the other party's Intellectual Property Rights as defined herein.

5.2 Improvements. Each party agrees that any tangible improvements, enhancements, upgrades, modification and updates to any technical confidential information, patents, copyrights or trade secrets (collectively "Improvements") developed by any party to this Agreement shall be the property of that respective party. It is expressly understood that all software acquired or developed by DMP remains the property of DMP including any and all changes made on behalf of THE CITY.

5.3 No Ownership. DMP will use the software applications and other intellectual property to perform services for THE CITY as set forth in this agreement. DMP does not grant and will not grant or be deemed to have granted any right or license under any patent, copyright, trademark, trade secret or any other business or intellectual property rights to THE CITY or any other person under this Agreement. THE CITY acquires and will acquire no rights under this or any other Agreement, or by course of dealing or conduct between the parties, to any of DMP's work such as, by way of example and not limitation, the software applications to be developed by

DMP, any product or software developed pursuant to any dealings between the Parties, or any derivative works.

5.4 No Work for Hire. The Parties acknowledge that any work done by DMP, and any embodiment of such work, whether patentable or not, shall not be considered a “specifically ordered or commissioned work” or a “work-made-for-hire” as those terms are defined by the United States Copyright Act. To the extent that any work does not so qualify, THE CITY agrees to and hereby does

- a. irrevocably assign and transfer to DMP all of THE CITY’s right, title and interest therein, including all intellectual property rights with respect to the United States and any other country, and any associated rights of renewal and all reversionary interests thereof, in and to such work including, without limitation, software and any and all upgrades and enhancements thereto, and all related documentation, source and object code, modifications and other related materials, and
- b. appoints DMP as THE CITY’s attorney in fact for the limited purpose of assigning such right, title and interest to DMP. At DMP’s request and expense, THE CITY shall execute and deliver such instruments and take such other action as may be requested (including assistance in any proprietary rights application process) by DMP to perfect or protect DMP’s rights in the work and to carry out the assignments contemplated in this Section. Except as provided or allowed by law, THE CITY agrees that it shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets of DMP from any software or other intellectual property of DMP.

5.5 Scope of License. THE CITY is licensed to distribute or redistribute documents or other materials prepared and provided by DMP under the terms of this Agreement. No other licenses, express or implied, to any other DMP Intellectual Property Rights are granted to THE CITY, THE CITY’s customers, or any party associated with THE CITY.

5.6 Rights on Termination. For each party, all rights to use the other party’s Intellectual Property terminate with the termination of this Agreement, and no license rights, express or implied, shall survive the termination of this Agreement. Upon termination of this Agreement, THE CITY may distribute the documents it has on hand or other materials provided by DMP prior to the termination of this Agreement, but THE CITY will not make any additional copies of such documents or materials, and THE CITY will not use the information provided by DMP hereunder in a manner which would infringe on DMP’s Intellectual Property Rights. Similarly, DMP will not use the information provided by THE CITY hereunder in a manner that would infringe on THE CITY’s Intellectual Property Rights.

SECTION 6. GENERAL PROVISIONS

6.1 Indemnification. Except as otherwise provided in this Agreement, each Party (the “Indemnitor”) will indemnify and hold harmless the other Party and its officers, directors, employees, and agents (the “Indemnitees”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments, including but not limited to reasonable attorneys’ fees, costs, and related expenses, which may be suffered by, accrue against, or be recovered from any of the Indemnitees resulting from any claim or suit brought by any

third party or parties arising out of or in connection with:

- a. any failure of performance or wrongful performance by the Indemnitor of any of its obligations under this Agreement; and
- b. any negligence or willful misconduct of the Indemnitor in connection with this Agreement.

The indemnity and hold harmless obligations of the Indemnitor pursuant to this of a continuing nature and will survive the termination or expiration of this Agreement.

6.2 Disclaimer. Both parties will make every effort to achieve the results anticipated by this Agreement and any other mutually agreed-upon objectives. However, except as otherwise provided in this Agreement, neither party guarantees or warrants that the goods or services provided pursuant to this Agreement will achieve any level of results. DMP is totally dependent on the information received from THE CITY and cannot be held responsible for the accuracy of the data received.

6.3 Governing Law, Venue and Jurisdiction. This Agreement will be governed and construed in accordance with the laws of the State of Texas as applied to agreements made, entered into and performed entirely in Texas by Texas residents, notwithstanding the actual residence of the parties. Both parties agree that any cause of action arising under this Agreement shall be brought exclusively in the State or Federal Courts in Galveston County, in Texas, and each party hereby irrevocably submits to the personal jurisdiction of such Courts for such purpose. The parties agree to waive whatever rights they may have to a jury trial.

6.4 Limit of Liability. Neither party will be liable for any incidental or consequential damages, including lost revenues, lost profits, or lost prospective economic advantage, arising from any performance or failure to perform under this Agreement, and each party hereby releases and waives any claims against the other party regarding such damages.

6.5 Force Majeure. Except for any payment obligations, neither party will be liable for delays or failure in performance under this Agreement caused by acts of God, war, strike, labor dispute, work stoppage, fire, or act of government.

6.6 Entire Agreement. This Agreement, including any Attachments, constitutes the entire agreement and understanding of the parties on the subject matter hereof, and as of the effective date, supersedes all prior agreements, whether written or oral, between the parties concerning the subject matter hereof. This Agreement may be modified only by further written agreement signed by all of the parties hereto.

6.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

6.8 Waiver. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

6.9 Assignment. Neither party may assign nor delegate the performance of services to be rendered under this Agreement without the express written consent of the other Party, which consent will not be unreasonably withheld. The parties agree that any agreed upon assignee of services rendered will be subject to all of the terms and conditions of this Agreement.

6.10 Notices. All notices given by either party pursuant to this Agreement shall be deemed sufficiently given if mailed certified mail, return receipt requested, Federal Express, or other form of receipted delivery to the respective addresses stated in this Agreement. A copy of any Notice shall be sent to:

THE CITY OF TEXAS CITY

DMP

The City of Texas City – Director of Finance
1801 9th Avenue North
Texas City, TX 77590

Robert K. Aiken, COO
1505 Wallace Drive, Suite 154
Carrollton, TX 75006

SECTION 7. Implementation

7.1 A mutually agreed upon Implementation start date will be determined within 30 days of Contract Execution. The implementation plan will be created and approved by both parties.

IN WITNESS WHEREOF, this Agreement has been executed on this the ____ day of _____, 2011.

DIRECT MAIL PARTNERS:

THE CITY

By: _____

By: _____

Robert K. Aiken

Name: _____

Chief Operating Officer

Title: _____

**Attachment 1
Billing and Pricing**

Utility Bill package price \$0.11

The statement package price includes the data processing, printing, inserting, and mailing of a single invoice printed duplex, black, on one sheet of 8 ½ x 11 Paper - 24#, white, perforated 3 2/3" from top, and a #10 window envelope printed with return address.

Pricing for additional components:

- Additional Impressions (1/0 black ink only) \$0.02 per impression
- Additional 24# white paper – non perf \$0.008 per sheet
- Additional 24# white paper – perforated \$0.015 per sheet
- Insert Additional Enclosures \$0.005 per enclosure

Postage:

Postage metered at the then current USPS AADC rate.

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