

UTILITY BILLING AND MAILING SERVICES AGREEMENT

THIS AGREEMENT is made this _____, between the **City of Lake Worth Beach**, Florida, a municipal corporation (“CITY”) with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **DataProse, LLC**, a limited liability company authorized to do business in the State of Florida (“CONTRACTOR”) with its office located at 1122 W. Bethel Rd., Suite 100, Coppell, TX 75019.

RECITALS

WHEREAS, the City issued a Request for Proposal (No. 21-203) in order to obtain a service provider for processing, printing, and mailing the City’s utility bills (“RFP”); and

WHEREAS, CONTRACTOR has provided the City with a written proposal in response to the RFP to provide the services as described and set out in the RFP; and

WHEREAS, the CITY desires to accept the CONTRACTOR’s proposal in order for CONTRACTOR to render the services to the CITY as provided herein; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by CONTRACTOR to the CITY; and,

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. RECITALS

1.1 The recitals set forth above are incorporated into this Agreement as true and correct statements.

2. TERM

2.1 The term of this Agreement shall commence upon the approval of this Agreement by the City Commission and shall be for an initial term of three (3) years unless earlier terminated as stated herein. The parties may extend the term for additional two (2), one-year periods by amendment to this Agreement. The City Manager is authorized to approve an amendment to this Agreement to extend the term as set forth herein.

3. SCOPE OF WORK

3.1 The CONTRACTOR’s scope of work includes providing the CITY with all utility bill printing and mailing services including utility statements and letters to residential, commercial, and industrial utility customers with address correction and encoding, as more specifically set forth in the RFP (“Scope of Work”).

3.2 The CONTRACTOR represents to the CITY that the Scope of Work provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR’s trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

3.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

3.4 The Scope of Work shall be performed by the CONTRACTOR or under its supervision and all personnel engaged in performing the Scope of Work shall be fully qualified and, if required, authorized or permitted under the

state and local law to perform such Scope of Work. All of the CONTRACTOR's personnel (and all subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

3.5 The Scope of Work shall be completed in accordance with the terms and conditions set forth in the RFP, which is incorporated by reference, and this Agreement.

4. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

4.1 The CONTRACTOR is and shall be, in the performance of the Scope of Work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Work performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Scope of Work.

4.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

5. FEE AND ORDERING MECHANISM

5.1 The CITY agrees to compensate CONTRACTOR in accordance with the rate schedule set forth in **Exhibit "A"**. The City shall not reimburse CONTRACTOR for any additional costs incurred as a direct or indirect result of CONTRACTOR providing services to the City under this Agreement and not set forth in **Exhibit "A"**.

5.2 Should the CITY require additional materials or services, not included in this Agreement, fees and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code, prior to any such additional materials or services being provided by the CONTRACTOR.

5.3 The City's ordering mechanism for the Scope of Work performed under this Agreement may be a City Purchase Order; however, the terms and conditions stated in a City Purchase Order shall not apply. CONTRACTOR shall not exceed amounts expressed on any Purchase Order. Note that the City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Purchase Order for required and approved goods and/or services.

6. INVOICE

6.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for services.

6.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

7. AUDIT BY CITY

7.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

8. COPIES OF DATA/DOCUMENTS

8.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

9. OWNERSHIP

9.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

10. WRITTEN AUTHORIZATION REQUIRED

10.1 The CONTRACTOR shall not make changes in the Scope of Work or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

11. DEFAULTS, TERMINATION OF AGREEMENT

11.1 If the CONTRACTOR fails to timely perform the Scope of Work or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

11.2 Notwithstanding paragraph 11.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

11.3 If this Agreement is terminated before the completion of the Term, the CONTRACTOR shall:

- (a) Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
- (b) Transfer all work in progress, completed work, and other materials related to the terminated services to the CITY in the format acceptable to CITY
- (c) Continue and complete all parts of the services that have not been terminated.

11.4 Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination. Notwithstanding the foregoing, the parties acknowledge and agree that the CITY is a municipal corporation existing under the laws of the State of Florida, and as such, this Agreement (and its Exhibit) is subject to budgeting and appropriation by the CITY of funds sufficient to pay the costs associated herewith in any fiscal year of the CITY. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the CITY's governing board in any fiscal year to pay the costs associated with the CITY's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the CITY to be, insufficient to pay the costs associated with the CITY's obligations hereunder in any fiscal period, then the CITY will notify CONTRACTOR of such occurrence and either the CITY or CONTRACTOR may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with

the preceding sentence shall be without penalty or expense to the CITY of any kind whatsoever; however, CITY shall pay CONTRACTOR for all services performed under this Agreement through the date of termination.

12. INSURANCE

12.1 Prior to commencing the Scope of Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured", and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

12.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance, on a primary, non-contributory basis in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

12.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

12.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

12.5 The CONTRACTOR shall maintain during the life of this Agreement, Cyber Liability insurance with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as set forth in the Scope of Work and shall include, but not be limited to, claims involving infringement of intellectual property, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with sufficient limits to respond to these obligations.

13. WAIVER OF BREACH

13.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

14. INDEMNITY

14.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

14.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

14.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

14.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

14.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

15. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

15.1 This Agreement consists of the terms and conditions provided herein; the RFP (including all specifications, exhibits and addenda attached thereto or referenced therein); and, Exhibit "A" (the CONTRACTOR's price proposal). To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the RFP (including all specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

15.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

16. ASSIGNMENT

16.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

17. SUCCESSORS AND ASSIGNS

17.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

18. WAIVER OF TRIAL BY JURY

18.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

19. GOVERNING LAW AND REMEDIES

19.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

19.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

20. TIME IS OF THE ESSENCE

20.1 Time is of the essence in the completion of the Scope of Work as specified herein.

21. NOTICES

21.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City of Lake Worth Beach
Attn: City Manager
7 North Dixie Highway
Lake Worth Beach, Florida 33460

With a copy to:

City of Lake Worth Beach Electric Utilities
Attn: Electric Utility Director
1900 2nd Avenue North
Lake Worth Beach, FL 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Mr. William K. Murray
DataProse, LLC
1122 W. Bethel Rd. Ste 100
Coppell, TX 75019

22. SEVERABILITY

22.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

23. DELAYS AND FORCES OF NATURE

23.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any

reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

24. COUNTERPARTS

24.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be signed digitally and each digitally signed counterpart shall be considered as an original of the signing party.

25. PUBLIC ENTITY CRIMES

25.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

26. PREPARATION

26.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

27. PALM BEACH COUNTY INSPECTOR GENERAL

27.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

28. ENFORCEMENT COSTS

28.1 Except as required in an indemnification provision herein, all parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to this Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement.

29. PUBLIC RECORDS

29.1 CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to

perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, DANDREA@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

30. COPYRIGHTS AND/OR PATENT RIGHTS

30.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

31. CONFIDENTIAL AND PROPRIETARY INFORMATION

31.1 Each party (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software ("Confidential Information") obtained from the other party (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law.

32. EXPORT ADMINISTRATION

32.1 Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

33. INFRINGEMENT INDEMNITY

33.1 CONTRACTOR will defend or settle at its expense a claim or suit brought by a third party against the CITY arising out of a claim asserting that the Scope of Work or other deliverables ("deliverables" hereafter) provided by CONTRACTOR under this Agreement infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. CONTRACTOR will indemnify and hold harmless the CITY against and from damages, costs, and reasonable attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) CONTRACTOR is promptly notified in writing of such claim or suit, (ii) CONTRACTOR will have the sole control of the defense and settlement thereof, and (iii) CITY furnishes CONTRACTOR, on reasonable request, information available to CITY for such defense. The CITY will not admit any such claim without prior consent of CONTRACTOR.

(a) In the event of a claim of infringement, CONTRACTOR shall, at its option:

1. procure for CITY the right to continue using the deliverables provided under this Agreement; or
2. replace or modify the deliverables so that the same becomes non-infringing but

substantially equivalent in functionality and performance.

3. If neither of the above actions is reasonably feasible, CONTRACTOR will refund to CITY the fee actually paid by CITY under the Agreement (as amortized on a straight-line basis over the time in which the CITY was able to use the deliverables).

(b) CONTRACTOR will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by CONTRACTOR or by its recommendation; or
2. combination of the deliverables with products other than those supplied by CONTRACTOR;
3. the alleged infringement or misappropriation relates to such modification or combination; and/or
4. the specifications or written direction of the CITY directs CONTRACTOR to construct, fabricate or otherwise provide the infringing deliverables, design, apparatus or, article, with CONTRACTOR's products, services, or work product.

(c) CONTRACTOR will also not have any indemnification obligation with respect to a claim: (i) if it has provided CITY with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with this Agreement.

(d) CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of this Agreement.

34. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

34.1 CONTRACTOR certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

35. FEDERAL AND STATE TAX

35.1 The CITY is exempt from payment of Florida State Sales and Use Tax. CONTRACTOR is not authorized to use the CITY's Tax Exemption Number.

36. PROTECTION OF PROPERTY

36.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

37. E-VERIFY

37.1 Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

- (a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an “unauthorized alien” as defined in Section 448.095(1)(k), Florida Statutes;
- (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
- (d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- (f) Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

38. SCRUTINIZED COMPANIES

38.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

38.2 If this Agreement is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

38.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

38.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

38.5 The CONTRACTOR agrees that if it or any of its subcontractors’ status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

38.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

39. SURVIVABILITY

39.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this **UTILITY BILLING AND MAILING SERVICES AGREEMENT** on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: **DATAPROSE, LLC**

By: William K. Murray
Print Name: William K. Murray
Title: CEO

[Corporate Seal]

STATE OF Texas
COUNTY OF Dallas

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 9th day of March 2021, by William Murray, as the CEO [title] of DATAPROSE, LLC a limited liability company, who is personally known to me or who has produced Personally Known as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Gabrielle Jefferson
Notary Public Signature
Notary Seal:

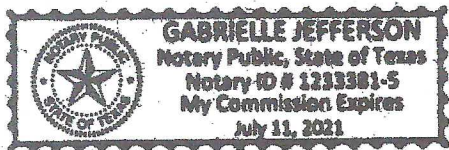


EXHIBIT "A"
Contractor's Rate Schedule
(pages 7 to 9)

RFP #21-203 UTILITY BILLING AND MAILING SERVICES
PRICE SHEET

Base Price

\$ 0.083 Unit price per statement, bill processed (including processing, sorting, printing of statement in highlight color laser, form, folding, inserting, mailing envelope, return envelope and delivery to USPS)

\$ 0.003 Charge for additional bill inserts

No charge to set up this service, please refer to the attached Optional Services

Charge for Combined Bills

No charge to set up this service, please refer to the attached Optional Services Pricing for pricing structure.

\$ Pricing for pricing structure.

Average postage per piece, consider postal sort starting at 5-Digit

\$ 0.395

Rate as qualifies (realizing that cost will be estimated, provide best estimate per statement) Based on the lowest possible 5-digit zip code rate. Actual postage will apply. Rate includes IMB discount and recent USPS postage increase.

\$ Waived during implementation Programming fee per hour for set-up along with the estimated hours it takes for a typical customer set up. TBD Hours

\$ 125.00 Programming fee per hour for changes after initial set-up.

\$ 999.00 Charge for additional bill inserts
Fee for printing & folding - print 1 page, duplex, 8x10, grayscale, per 25,500

\$ 0.005 Charge for indexed PDFs of bills

\$ 0.478 **TOTAL** (Unit price, plus postage for a single page bill, including the bill form, DataProse standard outer and return envelope.)

OPTIONAL SERVICES PRICING:

Implementation/Utility Set-up	Waived	1 Time
Search & View Bill statement archive – includes 12 months of storage	\$0.005	Each
Additional inserts – cost to insert (newsletter, water quality report, buck slips, etc.)	\$0.003	Each
Additional Impressions	\$0.035	Each
Oversized bills (7-99 pages) - includes 9 x 12 envelope - for hand inserting of statements greater than 8 pages	\$0.35	Each
Oversized bills (100 + pages) includes envelope	\$4.00	Each
Bill Suppression	\$0.03	Each
API – DataProse Search&ViewBill API is a tool that allows clients already utilizing the S&V service or their eBill payment vendor, a back-end path to access PDFs from the DataProse system. This product is a connector service between the client application or website and the indexed billing cycle PDFs at DataProse.	\$75.00	Month
Additional programming – client requested/approved	\$125.00	Hour
NCOALink (Address Correction/Update)	\$0.20	Correction
Offline folding – for inserts provided by client that are not folded	\$0.005	Each
Special Handling – Overnight + FedEx charge	Cost	Each
Estimated Postage Cost / 1-3oz. Piece – Based on the lowest possible 5-digit zip code rate. Actual postage will apply.	\$0.395	Each

Postage Deposit

Permanent Postage Deposit (Based on two (2) months estimated volume: 25,500 x 2 = 51,000 x \$0.395: \$20,145.

DP-eBILL – ELECTRONIC DELIVERY

PRODUCT OVERVIEW:

DataProse provides several different electronic delivery products. This document describes the DataProse email delivery. This document does not include any Electronic Bill Presentment/Payment (EBPP) functionality. The email itself is delivered in html format and can be customized to include graphical content and variable data. This core product is intended to be one email template per application, but multiple templates may be set up at the fee structure defined below. There is a robust reporting module in support of all documents delivered electronically. This reporting includes information such as, when the documents are delivered, which email messages were returned as undeliverable, which email documents were opened, and more.

PRODUCT FEATURES:

DP-eBill – Email delivery with a link back to the original bill-payer invoice. This link and the source document are stored by DataProse and is made available seamlessly to the bill-payer.

PRODUCT IMPLEMENTATION TIMING:

Standard implementation time for one email template into our normal process is 2-3 weeks. Each additional email template can be added in the same 2-3-week time frame.

PRODUCT PRICING:

Description	Frequency	Fee	Frequency
Implementation (includes one email template) and Initial Setup		\$300.00	One Time
Annual License/Subscription Fee		Waived	Annually
Additional Email Template Setup		\$300.00	Per Email Template
Standard Email Transaction		\$0.07	Per Email