

EXHIBIT
"A"

CITY OF ROUND ROCK
AGREEMENT FOR PURCHASE OF
PRINTING AND MAILING SERVICES FOR UTILITY BILLINGS
FROM DATAPROSE, LLC

THE STATE OF TEXAS §
§
CITY OF ROUND ROCK § **KNOW ALL BY THESE PRESENTS:**
§
COUNTY OF WILLIAMSON §
COUNTY OF TRAVIS §

That this Agreement for purchase of goods, labor, and services to print, insert and mail the City of Round Rock Utility Billing Department bills on a weekly basis, referred to herein as the "Agreement," is made and entered into on this the _____ day of the month of _____, 2021, between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as "City"), and DATAPROSE, LLC whose offices are located at 1122 West Bethel Road, Suite 100, Coppell, Texas 75019 (referred to herein as the "Vendor").

The purpose of this Agreement is to contractually bind Vendor to provision of all equipment, materials, and labor necessary to receive and convert (if required) billing information for printing monthly water utility bills and cut-off notices, print statements and notices with variable billing data, fold and insert with return envelope and any additional inserts, seal mailing envelopes, and mail to customers within City-specified timeframes.

RECITALS:

WHEREAS, City desires to purchase from Vendor the goods, labor, and services to print, insert and mail the City of Round Rock Utility Department bills; and

WHEREAS, City entered into an Interlocal Agreement for Joint and Cooperative Purchasing with the City of Cedar Park, Texas, on July 9, 2009, pursuant to Resolution No. R-09-07-09-9A1, attached as Exhibit "A" and incorporated herein; and

WHEREAS, said Interlocal Agreement was entered into for the purpose of allowing the City and the City of Cedar Park to jointly procure materials, supplies, goods, services or equipment pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code; and

WHEREAS, the City of Cedar Park previously entered into an Agreement with Vendor on June 8, 2020, for the purchase of goods, labor, and services to print, insert and mail the City of Cedar Park's water utility bills (see Exhibit "A"); and

WHEREAS, City desires to purchase the goods and services set forth herein pursuant to Chapter 271.102(c) in lieu of seeking competitive bids; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified goods and Vendor is obligated to sell same. The Agreement includes: (a) Interlocal Agreement between City and the City of Cedar Park for cooperative purchasing attached as Exhibit "A"; (b) pricing set forth in Exhibit "B"; and (c) any exhibits, addenda, and/or amendments thereto.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

F. **Vendor** means DataProse, LLC or any of its successors or assigns.

2.01 EFFECTIVE DATE, TERM, ALLOWABLE RENEWALS, PRICES FIRM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The term of this Agreement shall be for five (5) years from the effective date hereof. Prices shall be firm for the duration of this Agreement. A price increase may be considered on the anniversary date of the Agreement each year and shall be equal to the consumer price index for that year, but at no time can be greater than 10% for any single line item. Price adjustments will be made in accordance with the percentage changes in the U.S.

Department of Labor Consumer Price Index (CPI-U) for all Urban Customers. The price adjustments rate will be determined by comparing percentage difference between the CPI in effect for the base year six-month average (January through June or July through December); and each (January through June or July through December six month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate.

D. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The Interlocal Cooperation Agreement between City and the City of Cedar Park attached as Exhibit "A," and the goods and services which are the subject matter of this Agreement as described in Exhibit "B," together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

This Agreement supersedes and replaces any previous agreements between the parties and shall supersede any prior proposals, correspondence or discussions.

4.01 SCOPE OF WORK

Vendor shall satisfactorily provide all deliverables and services described in Exhibit "B" within the contract term specified. A change in the Scope of Services and any additional fees related thereto must be negotiated and agreed in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

5.01 COSTS

The City shall pay the Vendor for services rendered as described herein the prices set forth on page twenty-nine (29) of Exhibit "B" of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received; and
- D. Delivery dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may affect such termination by giving Vendor a written notice of termination at the end of its then-current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Vendor will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

- (a) There is a bona fide dispute between City and Vendor, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- (c) The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- (d) The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without incurring any liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

11.01 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

12.01 INSURANCE

Vendor shall meet all of City's insurance requirements as set forth on the City's website at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf Failure to meet or maintain City's insurance requirements shall be considered a material breach of this Agreement.

13.01 CITY'S REPRESENTATIVE

City hereby designates the following representative(s) authorized to act in its behalf with regard to this Agreement:

Jorge Villegas
Utility Billing Manager
221 East Main Street,
Round Rock, Texas 78664
(512) 218-5465
jvillas@roundrocktexas.gov

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the “Right to Assurance” section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days’ written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days’ written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City’s delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney’s fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor’s agents, employees or subcontractors, in the performance of Vendor’s obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel at any time during the term of this Agreement.

19.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to recipient's address as stated in this Agreement; or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

DataProse, LLC
1122 W. Bethel Road, Suite 100
Coppell, TX 75019

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephan L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

If a dispute or claim arises under this Agreement, the parties agree to first try to resolve the dispute or claim by appropriate internal means, including referral to each party's senior management. If the parties cannot reach a mutually satisfactory resolution, then and in that event any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Vendor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties.

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

24.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any such void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to

replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined to be void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures are on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

DataProse, LLC

By: William K. Murray
Printed Name: William K. Murray
Title: CEO
Date Signed: 10.20.2021

Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Exhibit "A"

RESOLVED this 9th day of July, 2009.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Secretary

Exhibit "A"

INTERLOCAL AGREEMENT
FOR JOINT AND COOPERATIVE PURCHASING
BETWEEN THE CITIES OF ROUND ROCK, CEDAR PARK, HUTTO,
LEANDER, GEORGETOWN, AND TAYLOR, TEXAS AND
THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.

This Interlocal Agreement (hereinafter referred to as the "Agreement") is entered into by and between the undersigned Local Governments of the State of Texas, namely the City of Round Rock, Texas, the City of Cedar Park, Texas, the City of Hutto, Texas, the City of Leander, Texas, the City of Georgetown, Texas, the City of Taylor, Texas, and the Brushy Creek Regional Utility Authority, Inc. (hereinafter referred to as the "Local Governments"), acting by and through their respective signature authorities, pursuant to and under authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, for the purpose of participating in joint and cooperative purchasing. The undersigned Local Governments may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271 of the Texas Local Government Code; and

WHEREAS, the Parties are all local governments as that term is defined in Section 271.101(2) of the Texas Local Government Code and in V.T.C.A., Government Code, Section 791.003(4)(B); and

WHEREAS, Section 271.102 of the Texas Local Government Code authorizes local governments to participate in a cooperative purchasing program with another local government or local cooperative organization; and

WHEREAS, a local government that purchases materials, supplies, goods, services or equipment pursuant to a cooperative purchasing program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods or services; and

WHEREAS, local governments in the State of Texas have the ability to realize substantial savings and economies of scale by jointly procuring materials, supplies, goods, services or equipment; and

WHEREAS, the Parties desire to enter into a cooperative purchasing program which will allow Parties to purchase materials, supplies, goods, services or equipment pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code.

WHEREAS, each of the Parties finds that its payments for services performed pursuant to this Agreement may be made from current revenues that are readily available only for payments that are due this fiscal year; and

156686fkg

R-09-07-09-9A1

Exhibit "A"

WHEREAS, the Parties find that the amount paid for the services performed under this Agreement fairly compensates the performing party; and

WHEREAS, the Parties, acting by and through their respective signature authorities, do hereby adopt and find the foregoing premises as findings of said governing bodies; and

NOW THEREFORE, in consideration of the mutual promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I PURPOSE

1. The purpose of this Agreement is to establish a cooperative purchasing program between the Parties, which will allow the Parties to realize savings when purchasing materials, supplies, goods, services or equipment, and which will facilitate the Parties' ability to satisfy state laws requiring the Parties to seek competitive bids for the purchase of goods and services.

ARTICLE II TERM

2. The term of this Agreement shall commence on the date on which all ~~Parties hereby agree to establish a period of (18) (15) (12) (9) (6) (3) months~~ unless superseded by a supplemental agreement or terminated as provided stated herein, until in this Agreement.

ARTICLE III TERMINATION

3. A Party may withdraw its participation from this Agreement by providing thirty (30) days prior written notice to the other Parties. Withdrawal of one Party to this Agreement does not affect the validity of this Agreement as to the remaining Parties.

ARTICLE IV PURCHASING

4. Each Party shall designate a person to act under the direction of, and on behalf of, said Party in all matters relating to the cooperative purchasing program. Each Party shall make payments directly to vendors under its respective contracts with vendors made under Chapter 271, Subchapter F, Texas Local Government Code. Each Party shall be responsible for the vendors' compliance with provisions relating to the quality of items and terms of delivery as to any items purchased by said Party under this Agreement.

Exhibit "A"

ARTICLE V CURRENT REVENUE

5. The Parties hereby warrant that all payments, expenditures, contributions, fees, costs, and disbursements, if any, required of each party hereunder or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party. The Parties hereby warrant that no debt is created by this Agreement.

ARTICLE VI FISCAL FUNDING

6. The obligations of the Parties pursuant to this Agreement are contingent ~~upon the availability of appropriations of funds from the State of Texas or any other source~~ refund of amounts previously contributed in the event of withdrawal for lack of funding. However, no Party will be entitled to a

ARTICLE VII MISCELLANEOUS

7A. Relationship of Parties: This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust.

7B. Notice: Any notice required or permitted to be delivered hereunder shall ~~be delivered by registered mail to the address set forth in the signature block of the~~ respective Party at the address set forth opposite the signature of the Party.

7C. Amendment: This Agreement may be amended by the mutual written agreement of the Parties.

7D. Severability: In the event any one or more of the provisions contained in this Agreement are invalid, illegal, or unenforceable, the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

7E. Governing Law: The validity of this Agreement and any of its terms and provisions, and the rights and duties of the Parties shall be governed by the law of the State of Texas. The Agreement shall lie in Williamson County, Texas.

Exhibit "A"

7F. **Entire Agreement:** This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

7G. **Recitals:** The recitals to this Agreement are incorporated herein.

7H. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original constituting one and the same instrument.

EXECUTED this 9th day of July, 2009.

CITY OF ROUND ROCK, TEXAS

By: [Signature]
Name: ALAN MCGRAW
Title: MAYOR
Date Signed: 7.9.09

Address for Notice:
221 E. Main Street
Round Rock, TX
78664

ATTEST:

By: [Signature]
City Secretary

FOR CITY APPROVED AS TO FORM:

By: [Signature]
City Attorney

Exhibit "A"

EXECUTED this 13th day of August, 2009.

CITY OF CEDAR PARK, TEXAS

By: Wanda Givens

Name: Branda Eivens

Title: City Manager

Date Signed: 8-13-09

Address for Notice:

600 N. Bell Boulevard
Cedar Park TX 78613

ATTEST:

By: Helene M. [Signature]

City Secretary

FOR CITY APPROVED AS TO FORM:

By: [Signature]

City Attorney

Exhibit "A"

EXECUTED this 18th day of June, 2009.

CITY OF HUTTO, TEXAS

By: David F. Begier
Name: DAVID F. BEGIER
Title: MAYOR, CITY OF HUTTO
Date Signed: JUNE 18, 2009

Address for Notice:
401 W. Front St
Hutto, TX 78634

ATTEST:

By: Debbie Chelf
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: _____
City Attorney



Exhibit "A"

EXECUTED this 18th day of June, 2009.

CITY OF LEANDER, TEXAS

By: John D. Cowman
Name: JOHN D. COWMAN
Title: MAYOR
Date Signed: 6/18/09

Address for Notice:
200 W. Willis
Leander, TX. 78041

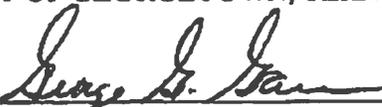
ATTEST
By: Nemine Haide
City Secretary

FOR CITY, APPROVED AS TO FORM:
By: Paul H. Sj
City Attorney

Exhibit "A"

EXECUTED this 24 day of June, 2009.

CITY OF GEORGETOWN, TEXAS

By: 
Name: George G. Garver
Title: Mayor
Date Signed: 6/24/09

Address for Notice:
113 E. 8th Street
P. O. Box 409
Georgetown, Texas 78627

ATTEST:

By: 
Jessica Hamilton, City Secretary

FOR CITY, APPROVED AS TO FORM:

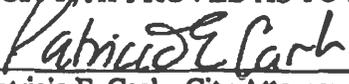
By: 
Patricia E. Carls, City Attorney

Exhibit "A"

EXECUTED this 9th day of July, 2009.

CITY OF TAYLOR, TEXAS

By: Rod Hortstine
Name: ROD HORTSTINE
Title: MAYOR
Date Signed: 7/10/09

Address for Notice:
400 PORTER ST.
TAYLOR, TX 76574

ATTEST:

By: Susan Brock
City Secretary

FOR CITY, APPROVED AS TO FORM:

By: Scott Hylleberg
City Attorney

Exhibit "A"

EXECUTED this 15th day of August, 2009.

BRUSHY CREEK REGIONAL
UTILITY AUTHORITY, INC. (BCRUA)

By: 
Name: Mitchell F. Fisher, Jr.
Title: President
Date Signed: Aug 25, 2009

Address for Notice:
221 E. Main St.
Colonial Rock, TX 78664

ATTEST:

By: 
Board Secretary

FOR BCRUA, APPROVED AS TO FORM:

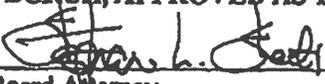
By: 
Board Attorney

Exhibit "A"

AGREEMENT BETWEEN CITY OF CEDAR PARK & DataProse LLC

This Agreement is entered into between the City of Cedar Park, Texas (hereinafter referred to as the "City") and DataProse LLC, a limited liability company, registered in the State of Texas (hereinafter referred to as "Contractor") to furnish Utility Bill Printing and Distribution services to the City of Cedar Park.

1. General Contract. This Agreement constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties. Documents expressly incorporated (as if copied in full) into this Agreement include: the City's Request for Proposal #07-020-220-CH-051 (**Exhibit A**), and Contractor's Proposal, dated 7/9/2019 (**Exhibit B**). In the event that any discrepancies or contradictions exist between the documents, the documents shall govern in the following order: this Agreement, **Exhibit A**, then **Exhibit B**, then *Addendum #1*.
2. Contractor Obligations. Contractor shall furnish utility bill printing and distribution services to the City of Cedar Park in accordance with **Exhibit A**.
3. City Obligations. The City shall pay to Contractor an amount up to, but not to exceed one hundred twenty-two thousand, four hundred ninety-three dollars and fifty-two cents (\$122,493.52) per year of the Term of the Agreement to perform the Obligations, unless amended by a change order and approved by the City of Cedar Park representative authorized to act on its behalf in regard to this Agreement. Payment will be governed by Texas Government Code Chapter 2251, as amended. Any invoice for partial payment submitted by Contractor must first be submitted and approved in advance by the Purchasing Manager for the City. Otherwise, no partial payment will be considered and each purchase order shall be delivered in its entirety in accordance with the terms of each purchase order. Contractor will be notified of invoice disputes within thirty (30) days of receipt of original invoice. Once the dispute is resolved and once an amended invoice is received, if applicable, the City payments will be submitted to Contractor within thirty (30) days.
4. Term of Agreement. This contract shall be in full force and effect when signed by all parties and shall continue for a term of one (1) year from the effective date. The Agreement shall automatically renew for four (4) additional one (1) year periods, unless either party notifies the other party in writing of its intent not to renew. Contractor shall notify the City in writing of its intent not to renew at least sixty (60) days prior to the end of the current term. The City shall notify Contractor in writing any time prior to the end of the current term.
5. Insurance. Contractor shall maintain insurance within the requirements below throughout the entirety of the Agreement Term(s).

a. Workers' Compensation and Employers' Liability:

- i. State of Texas: \$1,000,000 Each Accident
- ii. Employer's Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee

iii. Waiver of Subrogation

Exhibit "A"

b. Commercial General Liability:

i. Bodily Injury & Property Damage

General Aggregate Limit:	\$1,000,000
ii. Personal & Advertising Injury Limit	\$500,000
iii. Each Occurrence Limit	\$1,000,000

The policy shall be on an Occurrence Form and include the following coverage: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

c. Commercial Automobile Liability Limits:

i. Bodily Injury & Property Damage

Combined Single Limit:	\$1,000,000
ii. Medical Payments:	\$ 5,000 Per Person
iii. Uninsured/Underinsured Motorist	\$100,000

Prior to the execution of any awarded contract by the City, the Contractor shall forward Certificates of Insurance to the Purchasing Manager. The required insurance policies shall be procured and maintained in full force and effect for the duration of the awarded contract. Certificate Holder shall be the City of Cedar Park at 450 Cypress Creek Rd., Cedar Park, Texas 78613.

6. Contractor as Independent Contractor. The Parties agree that Contractor is an independent contractor for all purposes, with sole discretion and control regarding the time, place, and manner of the performance of its duties for the Project. Contractor and its officers, employees and agents are not, by the terms of this Agreement or otherwise, agents, employees or representatives of the City in any manner. The Parties further agree that this Project is not a joint enterprise or a joint venture between them.
7. **INDEMNIFICATION. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO FULLY AND UNCONDITIONALLY RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF CEDAR PARK, ITS MAYOR, CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY AND ALL CLAIMS, SUITS, DEMANDS, LOSSES, LIABILITIES, OR DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL CLAIMS RELATED TO DAMAGES OR INJURIES TO REAL OR PERSONAL PROPERTY AND PERSONS, INCLUDING DEATH, INCLUDING ANY AND ALL RELATED COSTS, EXPENSES, COURT COSTS, AND ATTORNEY FEES, WHETHER BROUGHT BY THE CONTRACTOR OR ANY OF THE CONTRACTOR'S OFFICERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES, OR BY ANY THIRD PARTY, THAT MAY DIRECTLY OR INDIRECTLY ARISE OUT OF, OR IN CONNECTION WITH THE PERFORMANCE OF THE OBLIGATIONS BY CONTRACTOR WHETHER CAUSED BY**

Exhibit "A"

THE SOLE OR JOINTLY NEGLIGENT, GROSSLY NEGLIGENT, RECKLESS, OR WILLFUL ACTS OF THE CONTRACTOR, ITS OFFICERS, AGENTS, OR EMPLOYEES, OR THE CITY OF CEDAR PARK, TEXAS, ITS MAYOR, CITY COUNCIL, OFFICERS, EMPLOYEES, OR AGENTS SAVE AND EXCEPT THE SOLE AND EXCLUSIVE NEGLIGENCE OF THE CITY. NEITHER PARTY HAS WAIVED NOR SHALL BE DEEMED TO HAVE WAIVED ANY DEFENSE THAT IT MAY HAVE IN RESPONSE TO SUCH CLAIMS.

8. Shipment. Shipment shall be F.O.B. Destination, freight prepaid and included.
9. Force Majeure. Either party shall be excused from performance and shall not be in default in respect to any obligation hereunder to the extent that the failure to perform such obligation is due to a Force Majeure Event. For the purpose of this Agreement, an "Event of Force Majeure" means any circumstance not within the reasonable control of the party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence, cannot be, or be caused to be, prevented, avoided or removed by such party, and (ii) such circumstance materially and adversely affects the ability of the party to perform its obligations under this Agreement, and (iii) such party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof.
10. Termination of Agreement. This Agreement may be terminated prior to the end of the term by the City, for any reason or no reason immediately upon providing written notice addressed to the Contractor at the addresses listed below under Notices. In the event of any such termination by the City pursuant to this provision, Contractor shall be entitled to be paid for work completed up to the date of termination.
11. Assignment. This Agreement may not be assigned, unless both parties consent to such assignment in writing.
12. Appropriation of Funds. This Agreement is subject to the appropriation of funds by the City Council in the City's budget adopted for any fiscal year for the specific purpose of making payments pursuant to this Agreement for that fiscal year. The obligation of the City pursuant to the awarded contract in any fiscal year for which this Agreement is in effect shall constitute a current expense of the City for that fiscal year only, and shall not constitute an indebtedness of the City of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to the awarded contract, the awarded contract may be terminated.
13. Dispute Resolution. Before any legal action is taken to enforce any term or condition under this Agreement, the parties hereto shall first attempt to settle the dispute by mediation, administered by the American Arbitration Association under its Mediation Rules.
14. Notice. Any and all notices required by this Agreement shall be submitted to the persons and/or organizations, as follows:
 - A. To City:
Cherie Hernandez, Utility Billing Manager
City of Cedar Park, Texas
450 Cypress Creek Road, Bldg. 1

Exhibit "A"

Cedar Park, Texas 78613
Email: cherie.hernandez@cedarparktexas.gov

Copy to:
J.P. LeCompte, City Attorney
City of Cedar Park, Texas
450 Cypress Creek Road, Bldg. 1
Cedar Park, Texas 78613
Email: jp.lecompte@cedarparktexas.gov

B. Contractor:
Tim Zombik, Sales Manager - Utilities
Dataprose, LLC
1122 W. Bethel Rd., Ste 100
Coppell, Texas 75019
Email: tzombik@dataprose.com

Any party may change the email address or mailing address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

15. Amendment. This Agreement may be amended or modified only by written instrument executed by both City and Contractor.
16. Governing Law. This Agreement shall be construed and enforced for all purposes pursuant to the laws of the State of Texas. Venue for legal actions involving this Agreement shall be in Williamson County, Texas with respect to state court, and the United States District Court for the Western District of Texas with respect to federal court.
17. Severability & Waiver. If any of the terms, provisions, or conditions of this Agreement or the application thereof to any circumstances shall be ruled invalid or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby, and each of the other terms, provisions, and conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. A waiver regarding a breach of any term, provision, or condition of this Agreement given by either party shall be effective only in that instance, shall not be construed as a bar or waiver of any right on any other occasion, and shall not act as a waiver of any other breach of this Agreement or any same or similar breach which may occur in the future.
18. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties. All previous oral or written promises or agreements by the parties hereto are void. This Agreement shall not be amended or altered except by a written document signed by the parties.
19. Authority to Sign. By my signature below, I hereby affirm that I am an authorized representative to bind Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date written below:

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Exhibit "A"

DATAPROSE LLC

By: William K. Murray
William K. Murray, CEO
Printed name & Title

4/7/2020
Date

CITY OF CEDAR PARK, TEXAS

By: Brenda Eivens
Brenda Eivens
City Manager

6-8-20
Date

Exhibit "A"
Addendum #1

Proposed Pricing

Postage will be first class pre-sorted bar code, do not include below.

Redesign of Utility Bill	\$ <u>Waived</u>
Printing of bills (per 1,000):	
4-color Duplex, regular bills	\$ <u>66.00</u>
2-color Simplex, delinquent bills	\$ <u>67.50</u>
Additional Impressions Black Only	\$ <u>35.00</u>
Mailing Envelope (per 1,000)	\$ <u>17.50</u>
Return Envelope (per 1,000)	\$ <u>13.50</u>
Cost to Insert extra item (per 1,000)	\$ <u>7.00</u>
Inserts Printing (per 20,000) Recycling Calendar	\$ <u>920.00</u>
Household Hazardous Waste Flyer	\$ <u>1,231.00</u>
Water Quality Report	\$ <u>1,660.00</u>
Any Other Costs <u>2-color, Duplex, regular bills</u>	<u>\$0.061 each/\$61.00 per 1,000</u>
<u>Search & View Bill - 12 months archiving</u>	\$ <u>0.01 each</u>
<u>Oversize bills (8-99 pages) -includes 9x12 envelope</u>	\$ <u>0.35 each</u>
<u>NCOALink (Address Correction/Update)</u>	\$ <u>0.25 each</u>
<u>Technical services-Client requested/approved</u>	\$ <u>125.00/hour</u>

How are postage costs addresses? Does your company pre-pay and add or do you require a deposit in advance?

DataProse requires a two (2) month postage deposit. Since the City of Cedar Park is a current client, there is already a postage deposit on hand.



AMENDMENT TO SERVICES AGREEMENT

This Amendment to the City of Round Rock's Agreement for Purchase of Printing and Mailing Services ("Amendment") amends the prior Services Agreement ("Agreement") made between DataProse, LLC, a Texas limited liability company ("DataProse") and the City of Round Rock ("Client") dated 12/5/2016. The purpose of this Amendment is to amend some terms and conditions agreed to in this prior Agreement. The effective date of this Amendment is the date last signed below ("Effective Date"). In consideration of the mutual promises and benefits contained herein, the parties hereby agree as follows:

PURPOSE OF AMENDMENT. This Amendment shall become effective as of the Effective Date and makes the following changes to the prior Agreement.

- Replaces Schedule 1.0 from the Agreement with Schedule 1.1 (below) which amends some pricing elements of the Fees for Goods & Services.
- Replaces Article 3 of the Agreement with Article 3.1 (below) which amends the term of the Agreement.
- Replaces Article 15 of the Agreement with Article 15.1 (below) which amends the client notice of the Agreement.
- Adds Article 19 which incorporates the City of Cedar Park's Cooperative Purchasing Terms.

DataProse and Client agree that this Amendment is hereby incorporated by reference into the Agreement. The Agreement and this Amendment set forth the entire understanding between the Parties with respect to the Licensed Software/Services, as defined below.

Schedule 1.1 – Fees for Goods & Services

Bill Package (Includes: data processing & duplex, CMYK (full color) imaging front over black imaging backer, 8.5x11, 24# white paper perforated at 3.5" from bottom, #10 window env., #9 single window reply env., folding, inserting, presorting and delivery to USPS)	\$0.097	Per Bill
Search & ViewBill (Archive Package Includes: data processing, archive creation, search, access & hosting of archive files for 12 months from creation date)	\$0.01	Per Bill
Search & View API	\$75.00	Per Month
NCOALink – Automated address update service	\$0.25	Per Address Correction
eBill – Electronic Delivery		
- Implementation (includes one email template) and initial setup	\$300.00	One Time
- Annual License/Subscription Fee	Waived	Annually
- Additional Email Template Setup (as requested)	\$300.00	Per Email Template
- Standard email transaction	\$0.06	Per Email
Additional Impressions – black ink only	\$0.035	Per Impression
Bill Suppression (data processing only – Group Y & Z)	\$0.04	Per Bill
Oversized Surcharge (8-99 page bills – Group C)	\$0.35	Per Bill
Oversized Surcharge (100+ page bills – Group D & E)	\$4.00	Per Bill
Additional Inserts	\$0.007	Per Insert
Offline Folding	\$0.005	Per Piece
Technical Services (including additional set-up beyond standard, formatting or custom reports, conditional logic & insert/forms composition)	\$125.00	Per Hour
Basic Set Up Fee (Late Notice Application)	NA	One Time
Freight, Courier & Air Delivery	Cost	Per Request

ARTICLE 3.1 TERM. The term of this Amendment shall commence as of the Effective Date, and shall continue for a period of not less than one (1) year, ending on the first anniversary of the Effective Date, unless terminated earlier in accordance with provisions found elsewhere in the Agreement. The Amendment shall renew itself for up to four (4) successive one (1) year terms unless written notice of cancellation is received by one party from the other at the end of the initial term or at the end of any succeeding one (1) year renewal term(s) by sending written notice of non-renewal to the other party no earlier than one hundred fifty (150), and no later than ninety (90), days before the expiration of the then current term.

ARTICLE 15.1 NOTICE. All notices must be in writing and if not personally delivered, be sent by facsimile, first class mail, nationally recognized overnight delivery service or by electronic mail. Mailed notices will be effective on the third day after mailing. Notice by personal delivery or delivery service will be effective when delivered. When sent by facsimile or electronic mail, notice will be effective on the day the transmission is received by the recipient provided that (a) a duplicate copy of the notice is promptly given by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Either party may change the address to which notices are to be sent by giving notice of such a change to the other party.

If to DataProse:

DataProse
1122 W. Bethel Road, Suite 100
Coppell, TX 75019
Attention: COO

If to Client:

City of Round Rock
221 E. Main Street
Round Rock, TX 78664-5299
Attention: Finance Manager

ARTICLE 19 COOPERATIVE PURCHASING. The pricing found in Schedule 1.1 – Fees for Goods & Services is pursuant to the City of Cedar Park's Interlocal Agreement and as permitted under the Texas Local Government Code, Chapter 791025, other government entities may participate under the same terms and conditions contained in this contract (piggyback). Each entity wishing to piggyback must have prior authorization from the City of Cedar Park and vendor. If such participation is authorized, all purchase orders/agreements will be issued directly from and shipped directly to the entity requiring supplies/services. The City of Cedar Park shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by these entities. Each entity reserves the right to determine their participation in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and to be effective as of the Effective Date.

DataProse, LLC

By: William K. Murray
CEO

Date: 10/20/2021

City of City of Round Rock:

By: _____

Title: _____ Date: _____