

Leg #160162

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda
BIDS AND PROPOSALS

TO: President and Village Board of Trustees
FROM: Scott Niehaus, Village Manager
DATE: 4/12/2016 Agenda Date: 04/21/2016
TITLE: Utility Bill Printing & Mailing Services – Bid Waiver

SUBMITTED BY: Tim Sexton, Finance Director

RESULTS:

Date Bids Were Published: Bidding Closed:
Total Number of Bids Received..... 0
Total Number of Bidders Meeting Specifications 0
Bid Security Required Yes No
Performance Bond Required Yes No
Were Any Bids Withdrawn Yes No
Explanation:
Waiver of Bids Requested? Yes No
If yes, explain:
Award Recommended to Lowest Responsible Bidder Yes No
If no, explain:

FISCAL IMPACT:

Budget estimate: Approximately \$8,400/year
Amount of Award: Per statement fee \$0.08/bill see Attachment E for additional fees for additional services as needed. No increase from 2013 contract. Please note postage is billed based on actual postage costs paid to the United States Postal Service thru Business Ink, Co.

BACKGROUND/RECOMMENDATION:

Waive bids and extend contract with Business Ink, Co. starting June 17, 2016 for a period of 3 years for Utility Bill Printing and Mailing Services.

Has Recommended Bidder Worked for Village Previously Yes No
If yes, was quality of work acceptable Yes No
Was item bid in accordance with Public Act 85-1295? Yes No
Waiver of bids - Public Act 85-1295 does not apply Yes

REVIEW (as needed):

Village Attorney XX _____ Date _____
Finance Director XX Timothy Sexton Date 4/12/16
Village Manager XX _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 Noon, Wednesday, prior to the Board Agenda distribution.



To: Scott Niehaus, Village Manager

From: Tim Sexton
Director of Finance

Date: April 12, 2016

Subject: Utility Bill Printing and Mailing Services Contract Renewal

The Village Board awarded a contract to Cash Cycle Solutions (now Business Ink, Co.), beginning June 17, 2013, to provide utility bill printing and mailing services for the Village of Lombard for the next three years, with an option for three additional years at the Village's request.

We have contacted Business Ink, Co. and they have agreed to maintain their prices from the 2013 contract for the period of three (3) years beginning June 17, 2016 thru June 30, 2019. The FY16 budget contains \$8,390 for waterbill printing and mailing services and \$38,500 for postage. Please note, Business Ink, Co. bills the Village for the actual postage fees paid to the United States Post Office. Business Ink, Co. has provided good service to the Village over the last three years.

Staff recommends the Board of Trustees waive bids and exercise their option to extend the contract with Business Ink, Co., for Utility Bill Printing and Mailing Services thru June 2019, at the current rates as stated in Attachment E of the attached Services Agreement.



Services Agreement

This Services Agreement (the "Agreement") is entered into effective this 17 day of June, 2016 ("Effective Date") by and between:

Business Ink, Co.
3035-R Horseshoe Lane
Charlotte, NC, 28208
(704) 926-3276

A Texas corporation

("Business Ink")

and

Village of Lombard
255 E. Wilson Ave.
Lombard, IL 60148
(630) 620-5953

An Illinois Public Utility

(the "Client")

By the signatures of their duly authorized representatives below, Business Ink and Client, intending to be legally bound, agree to all of the provisions of this Agreement and all Schedules and Addenda to this Agreement.

Business Ink, Co.

By: _____

Print name: _____

Title: _____

Date: _____

Witness: _____

Client

By: _____

Print name: _____

Title: _____

Date: _____

Witness: _____

1. Definitions

All terms shown in proper case and acronyms shown in all capital letters are defined in Attachment A included in and made a part of this Agreement.

2. Services

- a. Business Ink shall provide to Client the document communication and other services (the "Services") as described in each Services Order ("Order" or "Orders") appended to this Agreement in substantially the form provided in Attachment E hereto, or in such other form as Business Ink might approve.
- b. Additional Services may be incorporated into this Agreement by mutual agreement of Business Ink and the Client through the execution of a new Order. New Orders are subject to all the terms and conditions of this Agreement.

- c. Existing Orders may be amended by mutual agreement of Business Ink and the Client through the execution of a Superseding Order. Superseding Orders will be subject to all the terms and conditions of this Agreement.
- d. Business Ink is not obligated to provide any services under this Agreement unless set out in an Order executed by the parties.

3. Contract Term and Renewal

- a. This Agreement shall begin on the Effective Date indicated in the first paragraph of the Agreement and shall continue through the period three (3) years after the month the first Job under the Order is processed, unless stated otherwise on the Order.
- b. This Agreement, and Orders hereunder, shall automatically renew for successive one-year periods on the same terms of this Agreement unless notification of termination is provided by either party at least one hundred eighty (180) days prior to the term date of the Agreement then in effect.

4. Fees and Expenses

- a. Client shall pay to Business Ink the fees for Services set out in the Order and as per Attachment B.
- b. Client is responsible for the cost of all Mailing Materials in the production of Jobs. The initial cost of Mailing Materials is as set forth in the Order(s).
- c. If the Client elects to use custom Mailing Materials, (i) Client shall pay initial setup fees, if any, and (ii) Business Ink, may at its option, require the Client to prepay an amount equal to three (3) months' supply on a rolling three-month basis. If the customer requires a stocking level greater than three (3) months, an additional stocking fee may be assessed. Upon discontinuation of use of custom Mailing Materials and/or termination of the Agreement, any custom Mailing Materials that have been purchased or acquired for Client shall be (i) returned to Client at Client's expense, or (ii) destroyed by written approval of the Client. Client shall be responsible for payment of all custom Mailing Materials not already paid for by Client pursuant to this paragraph.
- d. Client agrees to reimburse Business Ink for all reasonable transportation, meals, lodging and other travel expenses, if any, incurred in traveling to the Client's location during Implementation of Services provided under this Agreement. Such travel and the costs incurred are subject to prior approval of Client.
- e. Client agrees to reimburse Business Ink for all reasonable costs of mailing or shipping incurred in delivery of print samples, office copies or other materials to the Client.

5. Exclusivity and Minimum Charges

- a. During the entire term of this Agreement, Client shall solely and exclusively utilize the Provider as its sole provider of the Services or any other services similar in nature to the Services.
- b. With respect to any month during the term of this Agreement, in the event Client fails to provide the minimum volume of business to Provider as set forth in the Order, in addition to the fee/charges payable by Client in respect of the Services performed that month, Client shall pay Provider an amount equal to the difference between such Charges and the amount that such Charges would have been had the minimum volume of business been provided by Client.

6. Taxes

- a. Client shall be responsible for all federal, state or local sales, use or excise taxes levied upon, or measured by the sale of goods or services provided herein, provided that such taxes are imposed by law on the Client as purchaser of the goods or services.
- b. Business Ink will exempt the Client from sales, use or excise taxes if the Client can provide a duly authorized exemption certificate.

7. Postage

- a. Client agrees to pay, as a deposit for postage required for Mailing Services, an amount equal to two (2) times the estimated monthly Postage ("Postage Deposit"). The Postage Deposit shall be considered an imprest deposit balance and actual postage usage will be reimbursed through invoicing as described in Section Attachment B.
- b. The initial estimate of monthly postage shall be based on volume estimates and postage rates provided in the Order. Business Ink will submit an invoice for the initial Postage Deposit approximately thirty (30) days before an Order's first Job is processed. The Client agrees to pay the initial Postage Deposit on or before an Order's first Job is processed.

- c. Business Ink will periodically review actual postage usage. If the average monthly postage over the preceding six (6) months times two (2) is greater than the Client's current Postage Deposit, Business Ink will submit an invoice to the Client for the difference. Invoices for additional Postage Deposits are due ten (10) days from the date of the invoice.
- d. If the average monthly postage over the preceding six (6) months times two (2) is less than the Client's current Postage Deposit, Business Ink will pay a refund to the Client for the difference.
- e. If the United States Postal Service increases the postal rates, Business Ink will invoice the Client the difference to maintain the Postal Deposit account equal to two (2) months of actual postage. Invoices for additional Postage Deposits are due ten (10) days from the date of the invoice.
- f. The Client may request that Business Ink review the Postage Deposit balance relative to actual postage usage at any time.
- g. Business Ink will process Jobs using permit postage, unless metered postage processing is requested by Client. Metered postage will require a processing charge as provided in the Order(s).
- h. Failure to pay invoices for Postage Deposits might result in a delay in the processing of a Job or Jobs until the past due invoice is paid. Such a delay shall not be deemed a failure of Business Ink to perform in accordance with its obligations defined herein.
- i. Upon termination of this Agreement the Postage Deposit will first be applied to any outstanding Client invoices with the remaining balance, if any, refunded to the Client.

8. Price Adjustment

- a. The price for the non-Mailing Materials element of Services may be adjusted on each anniversary of this Agreement for an amount representing the lesser of the increase in CPI (as defined in Attachment A) during in the preceding twelve (12) months or 4%.
- b. The price for Mailing Materials may be adjusted upon 30 days' notice to Client for any material increases as it occurs.

9. Client Obligations

- a. Client shall assign a project manager and secondary liaison for each Order to facilitate design, implementation and ongoing execution of Client obligations under the Order and this Agreement. Client shall promptly notify Business Ink's customer service representative verbally or in writing of any changes in the project manager or secondary liaison.
- b. Client shall make every effort to provide Business Ink with forms and data file structures within thirty (30) days of Order execution, but in no case longer than forty-five (45) days.
- c. Client shall be responsible for the performance of any of its third parties in providing form data file structures, data files or other services which Business Ink requires in performing its obligations under this Agreement.
- d. Client shall provide data files in the format and via communication method(s) agreed to by both parties during Implementation. Client is responsible for maintaining backup copies of data files it provides to Business Ink and Business Ink shall have no liability for any loss or damage caused by Client's failure to maintain copies.
- e. Client will notify Business Ink at least thirty (30) days prior to major changes to the form or any changes to data structure and at least seven (7) days prior to minor changes in the form layout.
- f. Client shall provide approvals within the Order's SLA timeframes. Business Ink SLA obligation for delivery of a job to the postal service begins only when the approval is provided.
- g. All Inserts must be within Business Ink's insertion machine specifications, which may change from time to time during the term of this Agreement. The current minimum specifications for Inserts are set forth on Attachment C. Any deviation from the specifications will result in additional charges and may result in a delay in completion of Job(s).
 - i. Fees for Inserts are as set forth in the Order(s), subject to limitations described in Attachment C.
 - ii. If requested by Client, Business Ink can provide printing services for Inserts. Pricing to be determined on an item by item basis.
 - iii. Client, at its option, may provide inserts to Business Ink for inclusion in Jobs.
 - iv. Inserts, whether provided through Business Ink or directly by Client, remain the property of the Client held on consignment by Business Ink. Inserts must be provided to Business Ink at least three (3) business days prior to a Job request.
- h. If the Services or data maintained by the Services is accessible through the internet or other networked environment, Client shall maintain, in connection with the operation of the Services, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication. To the extent that the Client, its affiliates or employees have access to the Services through the Internet or other networked environment, Client shall maintain agreements with such end-users that adequately protect the

confidentiality and intellectual property rights of Business Ink and disclaim any liability or responsibility of Business Ink with respect to such end-users.

- i. The Client is solely responsible for the adequacy and accuracy of the Client's data and the instructions, programs and procedures supplied by it. The Client shall provide its own audit controls, operating methods and checkpoints necessary to satisfy the Client's requirements with respect to detection of machine errors, security and adequacy of the data provided by the Client to Business Ink and necessary to enable recommencement and recovery in the event of any malfunction. Business Ink shall rely on the accuracy of all data and information provided to it by Client.
- j. The Client shall maintain adequate back-up material that will enable the regeneration of Client data, computer files, printer output and other data in the event of loss, damage or destruction of such data. Accordingly, Client shall produce and keep copies of the source documents of the information delivered to Business Ink and shall maintain a backup procedure for reconstruction of lost or altered Client computerized files and records to the extent deemed necessary by Client.
- k. Business Ink shall use commercially reasonable measures to prevent the loss, damage or destruction of the Client's data. If Client's data is lost, damaged or destroyed after its transmission to Business Ink, Business Ink shall notify the Client forthwith and the Client shall retransmit the data to Business Ink for processing. Both Business Ink and Client agree to co-operate reasonably to remedy any such loss, damage or destruction and to enable the processing of the Client's data by Business Ink as quickly as reasonably possible.

10. Business Ink Obligations

- a. Business Ink shall assign a customer service representative to facilitate design, implementation and ongoing execution of its obligations under this Agreement. Business Ink shall promptly notify Client of any changes in the assigned customer service representative. While there will be a specific customer service representative assigned to Client, all members of Business Ink customer service team are available to assist Client.
- b. Business Ink will complete form and data design required before Services can commence. Business Ink will provide assistance to Client in working with any of Client's third parties to the fullest extent practical.
- c. Business Ink shall print all forms and envelopes using format, fonts, color, special messages and variable data as prescribed by Client in the Order.
- d. Business Ink will provide materials, including paper, mailing envelopes, business return envelopes, and inks as required by the Order ("Mailing Materials"). All materials will be Business Ink standard high quality materials unless custom Mailing Materials are prescribed in the Order.
- e. Business Ink normally completes and delivers Jobs for mailing within three (3) business days of approval of the Job by Client, but the requirement for completion will be defined as the service level for each application in the Order ("SLA"). Business Ink will make every effort to complete each Job within the Order's SLA, but actual completion could vary due to Inserts outside of minimum specifications, a high number of special handling pieces, etc. Business Ink will make every effort to communicate issues that could delay completion of Jobs within their SLA. Business Ink does not warrant nor guarantee delivery time or performance of the United States Postal Service.
- f. Business Ink agrees to reprocess any work-product containing erroneous results due to a malfunction of Business Ink's equipment or operating system or error on the part of Business Ink's operators, on the condition that the Client notifies Business Ink of the erroneous results within sixty (60) days of the completion of the work-product in question. The Client shall implement data security procedures and checkpoints necessary to avoid excessive rerun times to restore a file to its required status.
- g. If the Services are partially or wholly interrupted owing to a malfunction in Business Ink's equipment, operating system or the telecommunication channels, the party detecting the interruption shall forthwith notify the other party orally, and Business Ink shall forthwith remedy the malfunction, with the assistance, if necessary, of the Client's suppliers of maintenance services for the remote terminal equipment or the telecommunications channels.
- h. After execution of an Order, Business Ink shall provide Client with a questionnaire regarding Client's requirements for implementation of Services. Client shall promptly complete and return such questionnaire to Business Ink. Following return of the questionnaire, Client and Business Ink shall schedule an on-site meeting to review Client's requirements. Client and Business Ink shall work together to develop a mutually-agreed implementation plan based upon the results of the questionnaire and the meeting. Upon approval of the implementation plan by Client, Business Ink shall commence the implementation work set forth in the implementation plan.
- i. Beginning on the Implementation Date, Business Ink shall provide the following combined ongoing support services to Client:
 - i. Business Ink shall provide to Client, during Business Ink' normal business hours (8 a.m. to 5 p.m. ET, Monday through Friday, excluding U.S. market holidays), telephone assistance regarding Client's proper and authorized use of the Services.

- j. From time to time, at its sole discretion, Business Ink may make or incorporate modifications, revisions, refinements, improvements, enhancements, or updates to the Business Ink Software. Client hereby accepts all such modifications, revisions, refinements, improvements, enhancements, and updates ("Updates"). All Updates shall be furnished by means of direct incorporation into the Business Ink Software and shall be accompanied by updates to the Business Ink Software documentation whenever Business Ink determines, in its sole discretion, that such updates are necessary. Upon being made or incorporated, updates shall be deemed a part of the Business Ink Software.
- k. Business Ink shall take all reasonable steps to ensure that access to Client's computerized files and records are available only to Business Ink, Client and Client's users. Business Ink reserves the right, at its own expense, to issue and change procedures from time-to-time to improve or protect file security.
- l. Should any amount due to Business Ink from Client become past due greater than fifteen (15) days from invoice due date, Business Ink shall have the right to suspend performance of Services until the past due amount is paid or Business Ink exercises its rights under Section 14 herein.

11. Privacy of Client Data

- a. Except as provided herein, Business Ink will comply with all applicable laws relating to personal, confidential and/or financial information and will not share any such information with any other companies, the government or any third party without the express written consent of the owner of the information, unless required to do so by law or court order. Business Ink shall not sell information it receives from Client or Client's clients to any party. Upon written request from Client, a copy of Business Ink's Privacy Policy will be provided.

12. Additional Services

- a. During the term of this Agreement, Client may request optional Services set forth in the Order.
- b. Client may request that Business Ink, subject to the availability of Business Ink personnel, provide to Client additional consulting services, custom programming, support services relating to custom programming, assistance with data transfers, and other specialized support services with respect to the Services. These services will be provided by Business Ink at Client location(s) if and when Business Ink and Client agree that on-site services are necessary.
- c. Prices and rates for additional services will be as provided in the Order, but are subject to change by Business Ink without prior notice to Client, except when such additional services are requested.

13. Confidentiality

- a. Client and Business Ink acknowledge that each will receive information, manuals and software from the other. Client and Business Ink will consider all such information secret, proprietary and confidential (herein "Confidential Information"). Client and Business Ink will keep confidential and not disclose Confidential Information to any person and will take measures within its organization to protect the secrecy of such Confidential Information
- b. Client agrees not to decompile, reverse engineer or reverse assemble Confidential Information. Materials such as manuals or user guides may be copied by the Client only for use pursuant to Client's responsibilities under this Agreement.
- c. The parties agree to restrict circulation of all Confidential Information within their own organization to the extent necessary to perform its obligations, and in no case will any disclosure be made to any third party, unless such disclosure is requested or required in any judicial or administrative proceeding or otherwise required by law.
- d. Should Client or Business Ink be required to disclose Confidential Information due to judicial, administrative or other legal proceeding, they shall immediately notify the other and cooperate fully in any and all efforts to overturn the required disclosure.
- e. Confidential Information shall not include information known to a party prior to disclosure hereunder; or becomes publicly known through no wrongful act of the other party; or which is disclosed to the other party by a third party without any breach of obligations of confidentiality.
- f. Business Ink will comply with HIPAA Privacy Regulations as may be required by the Client.
- g. All media releases, public announcements, and public disclosures by either party relating to this Agreement or the subject matter of this Agreement, including promotional or marketing material (both internal or external), but not including announcements intended solely for internal distribution or to meet legal or regulatory requirements, must be approved in writing by the other party prior to release except that Business Ink may, without prior approval of Client: (i) include Client's name on any list of Business Ink customers and distribute such list to prospective customers in confidence; (ii) issue a press release after Client commences using the Services in production, stating that Client is a customer of Business Ink Services; and (iii) use Client's name and excerpts of

information contained in such press release in other Business Ink or its parent company Web sites, publications, presentations, and investor relations and trade press communications and interviews.

14. Early Termination

- a. Client may terminate this Agreement "For Cause" if:
 - i. Business Ink breaches any of its material obligations under this Agreement and, provided the breach is susceptible to cure, does not cure the breach within thirty (30) days of written notification by Client.
 - ii. Business Ink dissolves or liquidates or otherwise discontinues all or a significant part of its business operations.
- b. Client has no additional ongoing obligations in the event it terminates the Agreement For Cause. However, Client remains obligated to pay all amounts outstanding for services already provided, for custom Mailing Materials, Inserts and any other products purchased by Business Ink exclusively for use in Clients Jobs.
- c. Business Ink may terminate this Agreement "For Cause" as follows:
 - i. Client fails to pay to Business Ink, within ten (10) days after Business Ink makes written demand thereof, any past-due amount payable under this Agreement including interest thereon that is not subject to a Good Faith Dispute (as defined in Attachment A).
 - ii. Client breaches any of its other obligations under this Agreement and, provided the breach is susceptible to cure, does not cure the breach within thirty (30) days of written notification by Business Ink.
 - iii. Client dissolves or liquidates or otherwise discontinues all or a significant part of its business operations.
- d. On the occurrence of any event which would permit Business Ink to terminate this Agreement pursuant to this section, in addition to all other rights and remedies available at law or in equity, Business Ink may, without terminating this Agreement, and in its sole discretion and without further notice to Client, suspend performance of any or all of its Services under this Agreement, until and unless Business Ink determines, in its sole discretion and upon whatever conditions Business Ink chooses to impose on Client, to resume performance of some or all of the suspended Services.
- e. In the event of termination by Client Without Cause or by Business Ink For Cause, Client shall pay a termination fee equal to 50% of amounts due under this Agreement, excluding Mailing Materials, with respect to the period ending on the date of early termination through the expiration date of the term then in effect. Such amount paid is an estimate of the liquidated damages for the Client's early termination, and shall in no way be construed as a penalty for such termination.
- f. Upon termination of this Agreement, Client will immediately discontinue use of and return to Business Ink all Confidential Information, Business Ink Software and other copies of any proprietary Business Ink information then in Client's possession. Within thirty (30) days after termination of this Agreement, Client will give notice to Business Ink containing reasonable instructions regarding the disposition of tapes, data, files and other property belonging to Client and then in Business Ink's possession. Business Ink will comply with that notice, except that Business Ink may retain all such property until Business Ink receives all payments due to Business Ink under this Agreement. If Client fails to give that notice within 30 days after termination of this Agreement, then Business Ink may dispose of such property as it sees fit.

15. Notices

- a. Notices, requests or other communications required hereunder to be sent to the other party shall be (a) by United States first class mail, postage prepaid, and addressed to the other party or (b) by personal delivery, or (c) by commercial overnight delivery service or (d) by facsimile or (e) by electronic mail at the address, email or facsimile number set forth hereunder (or to such address, email or facsimile number as such party shall have designated by proper notice). Both parties consent to service of process by certified mail at its address above (or to such other address as such party shall have designated by proper notice) in connection with any legal action.

If to Client:

Name _____
Title _____
Address _____

Email _____

Facsimile _____

If to Business Ink:

Name Tamara G. Woods
Title General Counsel
Address Business Ink, Co.
10214 N. IH 35
Austin, Texas 78753
Email: twoods@businessink.com

16. Assignment by Business Ink

- a. Business Ink may assign any or all of its rights, obligations and interest hereunder. Upon any such assignment, such assignee (herein "Assignee") shall have and be entitled to any and all rights and remedies of Business Ink under the Agreement. Client shall have all the same rights and remedies against Assignee that it had against Business Ink.
- b. UPON NOTICE OF SUCH ASSIGNMENT CUSTOMER AGREES TO PAY DIRECTLY TO ASSIGNEE WITHOUT ABATEMENT, DEDUCTION OR SETOFF ALL AMOUNTS WHICH BECOME DUE UNDER THE AGREEMENT AND FURTHER AGREES THAT IT WILL NOT ASSERT AGAINST ASSIGNEE ANY DEFENSE, COUNTERCLAIM OR SETOFF FOR ANY REASON WHATSOEVER IN ANY ACTION FOR PAYMENT OR POSSESSION BROUGHT BY ASSIGNEE.

17. Entire Agreement

- a. This Agreement and its referenced attachments represent the entire agreement. Only the additional documents listed in Attachment D are incorporated into this Agreement through reference.
- b. The terms of this Agreement shall prevail in the event of conflict with any and all other documents or correspondence between Business Ink and the Client, including conflicts with documents listed in Attachment D.
- c. This Agreement may be modified only by written addendum referencing this Agreement and executed by Business Ink and Client.
- d. Client may adjust services required (more/less) during contract term via Amendment approved by both parties. In the event of such Amendments, all other non-amended provisions of this Agreement remain in effect.

18. Miscellaneous

- a. No amendment to or waiver of any provision of the Agreement shall be effective unless in writing signed by Business Ink and Client.
- b. Delay, failure or partial exercise of any right, remedy or power under the Agreement by either party shall not operate as a waiver of such rights, remedy or power or preclude the exercise of any other right, remedy or power under the Agreement.
- c. Any provision of the Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions of the Agreement.
- d. In the event that legal or other action is required to enforce either party's rights under the Agreement, the prevailing party shall be reimbursed on demand for its reasonable attorneys' fees and its other related costs and expenses.
- e. BUSINESS INK'S TOTAL LIABILITY UNDER THIS AGREEMENT WILL UNDER NO CIRCUMSTANCES EXCEED THE FIRST THREE MONTHS' FEES ACTUALLY PAID BY CUSTOMER TO BUSINESS INK UNDER THIS AGREEMENT.
- f. UNDER NO CIRCUMSTANCES SHALL BUSINESS INK BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING SUCH DAMAGES ARISING FROM ANY BREACH OF THIS AGREEMENT, OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT FORESEEABLE, EVEN IF BUSINESS INK HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. UNDER NO CIRCUMSTANCES SHALL BUSINESS INK BE LIABLE FOR THE TRUTH, ACCURACY, TIMELINESS, SEQUENCE OR COMPLETENESS OF ANY CUSTOMER DATA PROVIDED BY CUSTOMER OR PROCESSED BY, OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN.
- g. Force Majeure. Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations) as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor problem,

unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.

- h. The captions in the Agreement are for convenience only and shall not define or limit any of the terms hereof.
- i. THE AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF.

**Attachment A
Definitions**

<u>Term</u>	<u>Definition</u>
a. Additional Order	Additional orders for services as defined in paragraph 2.b.
j. Agreement	This Agreement, as may be amended and all incorporated Orders.
k. Confidential Information	Information, manuals and software Client and/or Business Ink receives from the other will be considered secret, proprietary and confidential.
l. CPI	"Consumer Price Index - All Urban Consumers (Current Series), U.S. City Average, All Items" published by the United States Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/cpi/data.htm)
m. Good Faith Dispute	A good faith dispute by Client of certain amounts invoiced under this Agreement will be deemed to exist only if (i) Client has given written notice of the dispute to Business Ink promptly after receiving the invoice and (ii) the notice explains Client's position in reasonable detail. A Good Faith Dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice have been disputed; amounts not subject to good faith dispute must be paid pursuant to normal terms.
n. Implementation	The initial service phase(s) of an Order, including form design, data design and digital services set-up, required to be completed before ongoing Job Services can begin.
o. Initial Order	Initial order for services as defined in paragraph 2.a.
p. Inserts	Items to be inserted into and mailed with mail piece such as flyers and stuffers.
q. Job	Each execution of the ongoing Services of an Order. Ongoing Services typically include print and mail, fulfillment, electronic bill presentment and payment and document archival and retrieval.
r. Job Detail Report	A report listing pertinent information about Jobs processed for Client during a stated period of time, usually a month.
s. Mailing Materials	Materials used in the fulfillment of Mailing Services. Mailing materials include paper and pre-printed forms, mailing envelopes, return envelopes, inks and other materials purchased by Business Ink. Mailing Materials as used in this Agreement excludes Inserts and other similar materials paid for by the Client and provided to Business Ink as consigned inventory.
t. Mailing Services	Services in an order which involve the mailing of documents. Mailing services may include printing of documents by Business Ink or it may be mailing of documents prepared by the Client.
u. Order or Orders	Service order(s) as defined in paragraph 2.a.
v. Postage	Amounts paid to the United State Postal Service for the delivery of mail pieces.
w. Postage Deposit	Advance payment by Client of estimated postage as defined in Section 7.a.
x. PPI	"Producer Price Index for Commodities - Paper - WPU0913" published by the United States Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/ppi)
y. Seasonal Jobs	Orders for services to be performed over a period of not more than 30 days during a 6 month period.
z. Services	As defined in Section 2.
aa. SLA	Service level agreement as to time limits for completion and mailing of Jobs.
bb. Statement Processing	The statement processing component of Mailing Services, as delineated
cc. Superseding Order	Service order that amends an existing order as described in paragraph 2.c.
dd. Business Ink Software	Software owned or licensed from a third-party by Business Ink which is provided to or made available via the internet portal to the Client.

Attachment B
Invoicing for Fees and Expenses

1. Business Ink will invoice fees for Implementation in two parts:
 - 50% upon the execution of the Order, and
 - 50% upon completion of each Implementation element of the Order.
2. Unless otherwise set out in the Order, Business Ink will invoice fees for Jobs, Postage and expenses by the 3rd business day of the month for the previous month's Services.
3. Amounts due for all Orders under this Agreement will be included on a single invoice but on separate lines, unless separate billing is specified on the Order.
4. If requested by the Client, Business Ink will include a Job Detail Report with each invoice. This Job Detail Report will list every job processed in the billing period and include the Order description, TMM number, date mailed, number of packets processed, and number of special handlings, service fee and postage. The actual layout and content of the Job Detail Report may be modified by Business Ink at any time without prior notification to the Client.
5. Specialized reports may be provided, if requested by the Client, but will be subject to a mutually agreed to administrative cost recovery fee.
6. All invoices are due net fifteen (15) days. Client agrees to pay a service charge of 1.5% per month for all invoices not paid within 30 days of the invoice date.
7. Client will send all payments provided for herein to Business Ink' Remit To Address:
 - Business Ink, Co.
 - P.O. Box 671439
 - Dallas, Texas 75267-1439

Attachment C

Inserts must meet the following design and production specifications.

- Range of 6" – 8.5" in width.
- Range of 3.5" – 3.67" in height after folding.
- Single sheet, bi-fold, tri-fold or quad-fold (typically for 7", 11" and 14" paper, respectively) is acceptable.
- An insert with folds must be "C" folded, only. No "Z" folds.
- Minimum 24# paper for single and bi-fold; minimum 20# paper for tri and quad-fold.
- Maximum 64# paper for single sheet.

Inserts that are outside these minimum specifications must be approved by Business Ink in advance, and may incur additional insertion fees and may delay completion within prescribed SLAs.

Attachment D
Documents Incorporated Into This Agreement through Reference

[None]

Attachment E
Orders and Pricing

One-Time Implementation Fee (Initial Set-Up)	No Charge
Programming Charges (after initial implementation)	\$ 90.00/hour
Per Statement Fee*	\$ 0.08/bill
*Includes file transmission, materials, data processing, bill printing, mail preparation (folding, inserting a 1 page bill, 2 sided into an outgoing envelope, one marketing insert, and one return envelope) and delivery to USPS.	
Additional Insert Fee	No Charge/Insert
Supplying and Printing ADDITIONAL Inserts (marketing pieces, etc.)	Custom Quote
Additional Paper Costs*	\$ 0.005/bill
*To supply paper SFI Certified or 30% Recycled Stock	
Additional Envelope Costs*	\$ 0.00/bill
*To supply envelope SFI Certified or 30% Recycled Stock	
CASS Certification	No Charge/address
Move Updates (NCOA)	No Charge/address
Householding Fee	\$.06 per piece
PDF Imaging and Delivery of documents via FTP	\$ 0.01 for each PDF