



**AGENDA ITEM REQUEST FORM
CITY OF JOHNSON CITY, TEXAS
CITY COUNCIL**

ITEM NO. 7

MEETING DATE: December 6, 2022

AGENDA PLACEMENT:

- Ceremonial
- Consent
- Individual
- Closed Session

CAPTION:

Approval of a Printing and Mailing Services Agreement between the City of Johnson City, Texas and Usio Output Solutions, Inc. for utility billing and other printing and mailing purposes. (Staff)

STRATEGIC WORK PLAN:

- Not Applicable
- Goal 1: Increase Housing Diversity
- Goal 2: Expand Quality Lodging
- Goal 3: Improve Code Enforcement
- Goal 4: Improve Streetscaping & Signage
- Goal 5: Improve Fire Safety
- Goal 6: Improve Streets
- Goal 7: Increase Publicity & Promotion of the Community
- Goal 8: Increase Economic Development Activities

EXECUTIVE SUMMARY:

The City is currently in the process of transitioning from AVR to the FundView utility billing system. As such, related printing and mailing services must be transferred from AVR to FundView's preferred vendor, Usio Output Solutions, Inc., located in San Antonio, Texas.

Unlike the current printing and mailing services provider located in Houston, Texas, Usio would print and mail all utility bills and delinquent notices from the main Post Office in San Antonio, Texas. Moreover, the proposed Agreement also includes provisions allowing the City to print and mail other types of informational brochures, fliers, et cetera that are unrelated to utility billing to the general public.

The Agreement has been reviewed and approved by the City Attorney.

FINANCIAL:

The proposed fees are comparable to or less than the fees currently charged by AVR.

ATTACHMENTS: Proposed Agreement

SUGGESTED ACTION:

Motion to approve a Printing and Mailing Services Agreement between the City of Johnson City, Texas and Usio Output Solutions, Inc. for utility billing and other printing and mailing purposes.

PREPARED BY: City Staff

DATE SUBMITTED: 12/1/22

Printing and Mailing Services Agreement
Between
The City of Johnson City and Usio Output Solutions, Inc.

Date: December 6, 2022

Agreement: The following are terms and conditions of an agreement (AGREEMENT) under which Usio Output Solutions, Inc. (USIO), 2416 Brockton St., Suite 105, San Antonio, TX 78217 will perform printing and mailing services for the City of Johnson City Texas (COMPANY), 303 E. Pecan Drive, P.O. Box 369, Johnson City, Texas 78636.

Term: The primary term of this AGREEMENT is one (1) year. The AGREEMENT will commence on December 6, 2022 and terminate on December 5, 2023 (“primary term”). Either party may terminate this Agreement without cause by providing written notice to the other party 30 days prior to the proposed date of termination. However, if neither party hereto gives written notice to the other party of its intent to terminate the AGREEMENT, the AGREEMENT shall renew annually on the anniversary date under the same terms and conditions for a successive term equal to the primary term and continue to renew thereafter for successive terms under the same terms and conditions as the primary term unless either party hereto gives written notice to the other party of its intent to terminate the AGREEMENT.

Either party shall have the right to terminate this AGREEMENT with cause with immediate effect by written notice in the event that (i) the other party shall be wound up, go into liquidation or for any other reason shall cease or threaten to cease to carry on its business, (ii) a decree or order by a court or governmental agency or authority shall be entered for the appointment of a conservator, receiver or liquidator for the other party in an insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceeding, or the other party shall consent to such appointment; (iii) the other party shall commit any material breach of the terms of this AGREEMENT or shall repeat or fail to remedy any material breach, notwithstanding 30 days prior written notice of such breach; or (iv) the other party breaches its confidentiality obligations hereunder. Either party shall also have the right to terminate this AGREEMENT upon written notice to the other party in the event that it, in reasonably good faith, believes that the other party’s business practices in connection with this AGREEMENT are inappropriate or may cause reputational or other damage to such party.

Upon termination of this AGREEMENT for any reason, all payment obligations as described herein will survive such termination.

Default: Unless otherwise stated herein, if either party is in default under the AGREEMENT, and such default continues for thirty (30) days after written notice thereof by the other party, this AGREEMENT may thereupon be terminated by such other party.

Services & Pricing: USIO will bill COMPANY based on the exact number of items processed and mailed by USIO. The rate per item for which COMPANY will be charged and billed for services rendered and the amount of paper supplies used is detailed in Exhibit “A” attached hereto, and incorporated fully herein, and titled Schedule of Services and Prices.

Turnaround Time: If a print file arrives and is approved by 4:00 P.M. CST., the bills will be mailed the next working day in which USIO is open and the United States Post Office’s (USPS) Bulk Mail Entry Unit (BMEU) located on Perrin Beitel Road in San Antonio, Texas is open to receive presorted First-Class mail. Should USIO fail to receive a print file from COMPANY before the time in which it is expected to be received, USIO will use its best efforts to print and mail the items in such file within the turnaround times specified in this section.

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USIO – City of Johnson City Printing/Mailing Agreement

Taxes: COMPANY agrees to pay all applicable federal, state, county and local excise, sales and use taxes, if any, to the performance pursuant to this AGREEMENT, unless USIO is provided a completed Texas Sales and Use Tax Exemption Certification which Company shall provide immediately upon execution of this Agreement.

Payment: USIO will invoice COMPANY once a month. Payment of USIO's invoices will be due and payable within thirty (30) days of the date the invoice is mailed to COMPANY. If COMPANY fails to pay in accordance with such terms, USIO may at its option suspend performance until payment is made, subsequent to 15 days written notice to COMPANY.

In the event COMPANY fails or refuses to pay USIO for services rendered hereinunder in accordance with the payment terms provided above, COMPANY agrees and acknowledges that it shall be responsible for payment to USIO for all of USIO's reasonable and necessary attorneys' fees incurred in connection with USIO attempts to recover amounts due hereunder if court ordered.

Pre-Funding Postage: Postage is a pass-through charge and Usio will bill Company for the exact amount required by the United States Postal Service. All postage is due in advance of mailing, Thus, Usio requires 60-day of estimated pre-funding postage prior to mailing out items. At the end of each month, COMPANY will be notified and invoiced for the amount equal to the prior 30 days postage, due NET 30.

Indemnity: COMPANY shall have sole responsibility for all source data used by USIO for printing. USIO will have no responsibility for data not produced by USIO. USIO shall have no obligation to verify or check the source data.

COMPANY agrees to indemnify, defend, and hold harmless USIO, its officers, directors, and employees from and against any demands, claims, causes of action or suits of any kind or nature brought by a third party against USIO, including reasonable attorney's fees and costs of litigation, incurred by USIO as a result of gross negligence or willful misconduct of the USIO in performance of this Agreement.

Nothing contained in this agreement shall be construed as a waiver of or relinquishment of governmental or sovereign immunity by the Company-City.

The provisions of this Section shall survive termination of this AGREEMENT.

Liabilities: EXCEPT THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Unless expressly stated otherwise herein, USIO shall not be liable to COMPANY or to any third party for lost profits or revenue, loss of time or use of the services, loss of data, costs of consultants, costs of substitute products, claims by third parties, or similar costs, or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable), nor shall USIO be liable for any expense or damage incurred by COMPANY, whether internal to COMPANY or paid by COMPANY to any third party. Unless otherwise stated herein, USIO's liability hereunder shall in no event exceed an amount equal to the actual monetary damages incurred by the COMPANY.

In the event error or deficiencies in completed work result from USIO's or its subcontractor's performance, USIO's sole obligation will be to correct such error or deficiencies. If COMPANY's data is lost or destroyed, USIO liability is limited to reprocessing the source data if possible, but if not then, to refund any payment made to COMPANY for said completed work. Reruns of printing or processing data caused by incomplete

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USIO – City of Johnson City Printing/Mailing Agreement

input media or incorrect source data not resulting from errors, omission or negligence of USIO or its subcontractors will be charged to COMPANY by USIO at the processing charge rates as found in the Services and Prices provisions found herein. USIO is not responsible for defective source data or media. Defective data or media will be returned to COMPANY for regeneration. USIO will not be responsible for printing or mailing delays caused by defective source data. In the event that USIO print and mails a job incorrectly due to an error on USIO's behalf, USIO will re-print and mail the incorrect part or the entire mailing free of charge including postage at COMPANY's discretion.

USIO shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, government order, interruption of transmission or communication facilities, equipment failure, war, pandemic, emergency conditions or other circumstances beyond USIO's control, including but not limited to, acts or omissions of third parties. In addition, USIO shall be excused from failing to perform under this AGREEMENT if USIO reasonably believes such performance would violate state or federal law.

Excusable Delay: USIO shall not be liable for failure or delay in providing the services herein if due to fire, riot, war, third party labor disputes, acts of GOD or other causes or conditions beyond its reasonable control.

Binding Effect: This AGREEMENT shall be binding upon and inure to the benefit of and be enforceable by the parties to this AGREEMENT and their respective successors, transferees and assignees, except that COMPANY may not directly or indirectly transfer or assign any interest in this AGREEMENT, in whole or in part, without the prior written consent of USIO, which consent shall not be unreasonably withheld, conditioned or delayed.

Third Party Beneficiary; No Agency: This AGREEMENT is for the benefit of, and may be enforced only by, USIO and COMPANY and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party. This AGREEMENT does not make, and shall not be deemed to create, any agency relationship between COMPANY and USIO but rather the relationship of COMPANY and USIO shall be that of independent contractors.

Notices: All notices given pursuant to this AGREEMENT shall be in writing and hand delivered or delivered by certified mail, return receipt requested, as follows:

If to USIO:

Sy Green, Senior Vice President
Usio Output Solutions, Inc.
2416 Brockton St., Ste. 105
San Antonio, Texas 78217

or the most current address as per any notification by USIO of an address change.

With a copy to:

Usio, Inc
Attn: General Counsel
3611 Paesanos Pkwy
Suite 300
San Antonio, TX 78231

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USIO – City of Johnson City Printing/Mailing Agreement

If to Company:
City of Johnson City
Attn: Chief Administrative Officer
P.O. Box 636
Johnson City, Texas 78636

or the most current address as per any notification by COMPANY of an address change.

A notice shall be deemed delivered when received if delivered personally or if sent by Federal Express or other carrier; or 72 hours after deposit if sent by First Class, postage pre-paid mail through the U.S. Postal Service.

Confidentiality: In performing obligations pursuant to this AGREEMENT, each party hereto ("Disclosing Party") may disclose to the other party ("Receiving Party") information in connection with the performance of this AGREEMENT, including without limitation, the Disclosing Party's business, products, services, formats, computer programs, policies, procedures, methods, technical developments, trade secrets, financial results, formulas, marketing research and development methods, marketing statistics, product development plans, membership solicitation methods, strategies, and research data. All such information about the Disclosing Party shall be deemed "Confidential Information." The parties shall use the Confidential Information of the other Party solely to perform this AGREEMENT, and all Confidential Information shall remain the sole property of the Disclosing Party. Each party acknowledges that it does not have and cannot acquire any right or claim to the Confidential Information of the other party. USIO shall advise Company of any requests received for Company's confidential information and forward said request to Company for proper handling and response.

Each party acknowledges that the injury that would be sustained by the other as a result of any violation of this provision cannot be compensated solely by money damages, and therefore each agrees that the other shall be entitled to seek injunctive relief in addition to any other rights available under this AGREEMENT in the event of a violation of the provisions contained in this section.

Upon termination of this AGREEMENT, each party shall return all Confidential Information of the other party and certify that such Confidential Information has been returned in its entirety.

The provisions of this section shall survive termination of this AGREEMENT.

Equitable Remedies: The parties agree, without prejudice to any rights to judicial relief each party may otherwise have, each party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this AGREEMENT. Each party shall be responsible for its own legal fees and costs.

Reasonableness and Necessity of Covenants: Each Party acknowledges and agrees that the covenants and restrictions contained herein are: (i) necessary, fundamental, and required for the protection of legitimate business interests of the other party; (ii) the covenants and restrictions relate to matters which are of a special, unique, and extraordinary character; and (iii) a breach of any covenants or restrictions may result in irreparable harm and damages to the other party which may not be adequately compensated by a monetary award. In the event any of the restrictions contained herein should ever be deemed to exceed any limitations permitted by applicable law, then such provision shall be deemed performable to the maximum extent permitted by applicable law.

Governing Law: This AGREEMENT shall be governed by the laws of the STATE OF TEXAS as to matter of validity, construction, effect, performance and remedies. Venue will be determined depending on the nature of the suit.

Mediation: In the event the parties are unable to resolve the dispute pursuant to the foregoing, either party may submit the dispute to a licensed attorney agreed to by the parties and who that is an experienced mediator and is located in either Blanco or Bexar County, Texas to work with them to resolve their differences utilizing non-binding mediation. This mediation is a compromise negotiation for purposes of Rule 408 of the Federal Rules of Evidence and Texas Rules of Evidence and is an alternative dispute resolution procedure subject to Section 154.073 of the Texas Civil Practice & Remedies Code. If after non-binding mediation occurs, the dispute is not resolved, the parties are free to exercise all other legal and equitable rights subject to the terms of this AGREEMENT. Each party shall be responsible for its legal fees and costs, unless court ordered.

Waiver: If either party waives in writing an unsatisfied condition, representation, warranty, undertaking or agreement (or portion thereof) set forth herein, the waiving party shall thereafter be barred from recovering, and thereafter shall not seek to recover, any damages, claims, losses, liabilities or expenses, including, without limitation, legal and other expenses, from the other party with respect to the matter or matters so waived. Except as otherwise specifically provided for in this AGREEMENT, the failure of any party to promptly enforce its rights herein shall not be construed to be a waiver of such rights unless agreed to in writing.

USIO Operations: USIO can be contacted toll free at 800-255-3190. USIO's normal hours of operation are from 8:00 A.M. to 5:00 P.M. Central Time during the weekdays with the exception of the following holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving, and Christmas Day.

Amendment: Either party may amend any part of this AGREEMENT in writing from time to time. Any amendment shall be approved and signed by both parties.

Severability. If any provision of this AGREEMENT is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, and this AGREEMENT shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part hereof; and the remaining provisions herein shall remain in full force and effect. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added, and upon written, executed approval by both parties, as part of this AGREEMENT a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Entire Agreement: This AGREEMENT, including all exhibits or schedules hereto, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written.

Counterparts: This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. This AGREEMENT may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the authorized representatives of Usio Output Solutions, Inc. and Company execute this AGREEMENT to be effective on December 6, 2022.

Signature Page follows.

City of Johnson City, Texas

Usio Output Solutions, Inc.

By: _____

By: _____

Name: Rick Schroder

Name: _____

Title: Chief Administrative Officer

Title: _____

Date: _____

Date: _____

Exhibit A

Billing Procedure and Minimum File Processing Fee: COMPANY will be billed monthly by USIO for the total volume of the items produced during the previous month at the Charge per Item set forth in this Exhibit. Billing will be calculated by multiplying the number of items used or produced during the month by the charge per Item. The minimum file processing fee is \$100.00.

Service Price Guarantee: The prices for services as set forth in the tables in this Exhibit are guaranteed for the term of the AGREEMENT.

Programming Fees: Initial setup fee, up to five (5) hours. After the initial setup, any custom programming request may be billed at \$225.00 per hour.

Postage: Postage is a pass-through charge and will bill Company for the exact amount required by the United States Postal Service. All postage is due in advance of mailing.