

Strahm Automation and Mailing
Mail Processing Agreement

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between Strahm Automation and Mailing Service (hereinafter "Strahm") and the City of Overland Park, Kansas (hereinafter "City"). This agreement will be a one (1) year agreement with the option to renew additional years.

The parties hereto mutually agree and promise as follows:

1. Services Provided By Strahm Automation and Mailing.

Strahm Automation will pick up the customer's letter and flats mail. Strahm will meter at the current USPS rate that is below in the Fee section. The mail shall be delivered to the USPS on the metered date, provided that the metered mail is available for pick up on the scheduled times. Mail will be picked up in the City Hall mailroom, located in the basement level. Pickup time will be no earlier than 3:30 pm

Strahm will pick up mail on city scheduled work days. Mail will not be picked up or processed on the following City recognized holidays.

New Year's Day	Martin Luther King Day
Memorial Day	Fourth of July
Labor Day	Thanksgiving Day and the following Friday
Christmas Day	

The City will close on Friday when the holiday falls on a Saturday and close on Monday for a Sunday holiday.

2. Fees for Automated Presort Services.

NO PICK UP FEES

Letters

1 oz mail \$.394 no bill back
2 oz mail \$.519 no bill back
3 oz mail \$.644 no bill back
Handwritten mail is metered at full pay
Metering fees: \$.02 per piece

Flats

Meter at the 5 digit flats rate equivalent to the weight of the flat
Bill back \$.30 processing fee per piece
Metering fees: \$.08 per flat
Bill back no qualifying pieces back to full pay

Strahm will require a determined Escrow amount that stays in the City's postage account to be used for its postage use.

Strahm will invoice postage on a monthly basis.

The City reserves the right to audit the City's postage account with Strahm. Strahm agrees to fully cooperate with such an audit.

Customer shall reimburse Strahm Automation and Mailing for all postage metered by Strahm Automation on behalf of the customer.

3. Machine Rejected Fee

Actual rejects at first class for flats

4. Customer's Responsibilities.

Customer represents and warrants that its mail will be in compliance with all USPS regulations and all other applicable laws, rules and regulations. Customer agrees to promptly execute any and all Strahm Automation or USPS documents required by the USPS. Customer's mail shall be in trays with all envelopes facing in the same direction, properly addressed. If Customer's mail is pre-metered, it shall be affixed with the correct postage rate, the correct date and appropriate "pre-sorted" notations. Permit imprinted, it shall be separated and presented by the correct weight and affixed with the appropriate "pre-sorted" and indicia imprint. Pre-cancelled stamp, it shall be affixed with a pre-cancelled stamp and shall contain a return address. Customer shall complete and sign pick up slips indicating the number of pieces of mail to be processed by Strahm Automation.

5. Insurance.

(a) Strahm shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Strahm shall provide certificates of insurance and renewals thereof on forms approved by the City. Strahm or its insurer shall endeavor to notify the City at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

(b) Strahm, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Strahm shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Strahm's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Strahm shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

(c) Commercial General Liability -

General Aggregate:	\$ 500,000
Products-Completed Operations Aggregate:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy must include the following conditions:

- i) Broad Form Contractual/Contractually Assumed Liability
- ii) Broad Form Property Damage

(d) Automobile Liability -

Policy shall protect Strahm against claims for bodily injury and/or property damage arising from the ownership or use of all owned, if any, and hired and/or non-owned vehicles and must include protection for either:

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section.

(e) Workers' Compensation and Employer's Liability -

This insurance shall protect Strahm against all claims under applicable state Workers' Compensation laws. Strahm shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

(f) Industry Ratings –

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of A- or better; and
- (3) Carries at least a Class VII financial rating.

OR

Is a company mutually agreed upon by the City and Strahm.

Certification of insurance coverage in subparagraphs (c) & (d) above shall be on a Standard Acond Certificate of Liability Insurance form. Unless otherwise specified, City shall be shown as an additional insured on all general and automobile liability policies of insurance.

(g) Subcontractors' Insurance. If a part of the Agreement is to be sublet, Strahm shall either:

- (1) Cover all subcontractors under its insurance policies;
- or
- (2) Require each subcontractor not so covered to secure insurance which will protect against all applicable hazards or risks of loss as, and in the minimum amounts designated.

Whichever option is chosen, Strahm shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors. The provisions of this Agreement shall not be operative until proof of insurance is submitted to City.

6. Terms and Termination.

The term of this Agreement shall commence on the date above written and shall continue in force for a period of one (1) year. Thereupon, the Agreement will renew automatically for an additional one (1) year terms unless either party gives written notice of intent to terminate thirty (30) days prior to the date the term expires.

Strahm may, at any time, terminate this Agreement at its convenience. Strahm shall give written notice at least thirty (30) days in advance of the termination to the City specifying that the Agreement or a designated part thereof shall be terminated and when termination becomes effective. The City shall compensate Strahm for all services satisfactorily completed up to the date of termination.

The City may, terminate with or without cause, the services of Strahm at any time, subject to written notice to Strahm. If the City shall terminate the Agreement, the City shall compensate Strahm for all services satisfactorily completed to date of its receipt of the termination notice.

If either party is violating any of the conditions of this Agreement, the other party may serve written notice of its intention to terminate the Agreement. Unless within thirty (30) days after the serving of the notice a satisfactory arrangement has been made to remedy the breach, this

Agreement shall terminate. The City retains the right to withhold the payment or any portion thereof for damages incurred as a result of Contractor's breach of this Agreement.

Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify Strahm of such termination, which shall not constitute a default under the Agreement, at least sixty (60) days prior to the end of the City's then current budget year.

7. Equipment Failures.

If Strahm Automation should experience equipment failure and can't get the City's mail out the date posted on the mail piece, then Strahm Automation would pay more postage at its cost.

8. Confidentiality.

Strahm Automation acknowledges and agrees that all information and materials provided to Strahm Automation by Customer or any of its affiliates in connection with this Agreement, including but not limited to names and addresses of Customers is confidential and proprietary. Strahm Automation agrees to use such information and materials only for the purposes of performing its obligations set forth in this Agreement. Strahm Automation further agrees that it will not disclose any such information or materials to any other person without the prior written consent of Customer.

9. Modification

Any modifications made to this contract must be written by both parties.

10. Warranty- Disclaimer.

Strahm shall perform all duties and obligations required of it pursuant to this Agreement in accordance with accepted presort mail processing industry standards. STRAHM AUTOMATION HAS MADE NO STATEMENTS OF FACT OR OTHER REPRESENTATIONS TO CUSTOMER OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND CUSTOMER HEREBY, AGREES THAT IT HAS NOT RELIED ON ANY STATEMENT OF FACT OR OTHER REPRESENTATION FROM STRAHM AUTOMATION IN ENTERING INTO THIS AGREEMENT OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

11. Indemnification.

A. Definitions

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

1. "Strahm" means and includes Strahm Automation and Mailing Service, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
2. "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this contract whether arising before or after the completion of the work required hereunder.

B. Indemnity

For purposes of this Agreement, Strahm hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of Strahm. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Strahm's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on Strahm to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss. With respect to the City's rights as set forth herein, Strahm expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of Strahm to indemnify the City.

12. Anti-Discrimination.

A. Strahm agrees that:

1. Strahm shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin, ancestry or age;
2. In all solicitations or advertisements for employees, Strahm shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. If Strahm fails to comply with the manner in which the contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Strahm shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. If Strahm is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Strahm shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City; and
5. Strahm shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. Strahm further agrees that Strahm shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans

With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

13. Governing Law-

This Agreement shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Kansas.

14. Authorized Signature.

Each party represents to the other that the person signing in its behalf has been duly authorized to sign this Agreement.

Strahm Automation and Mailing Service

Customer: City Of Overland Park

By: _____
Brian L. Dicker

By: _____
Carl Gerlach

Title: President

Title: Mayor

Address: 1700 Broadway
Kansas City, MO 64108

Address: 8500 Santa Fe
Overland Park, Kansas 66212

Date signed: _____

Date signed: _____

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney