



July 17th, 2018

Via U.S. Mail and Email

Julie Williams
Public Relations Manager
County of Los Alamos
PO Box 1030
Los Alamos, New Mexico 87544

Re: Request for Consent to Assignment of Agreement

Dear Ms. Williams:

Reference is made to the Diversified Data Processing & Consulting, Inc. Service Agreement¹, dated as of 3/1/17 (together with any amendments, addendum, supplements and related documents and agreements, the "**Agreement**"), between Diversified Data Processing & Consulting, Inc., a Michigan corporation d/b/a DivDat ("**we**" or "**our**"), and County of Los Alamos ("**you**" or "**your**").

We are pleased to share with you the exciting news that we have entered into an Asset Purchase Agreement, dated as of June 26, 2018, with Diamond Marketing Solutions Group, Inc., a Delaware corporation ("**Diamond**"), pursuant to which we have agreed to sell to Diamond certain of our business assets (the "**Transaction**"). Diamond is a subsidiary of Output Services Group, Inc. (also known as OSG Billing Services, "**OSG**"), which has been in business for over 25 years and is one of the largest providers of integrated communication and billing solutions in the U.S. OSG and Diamond together offer comprehensive and flexible solutions including electronic billing and invoice/statement services, document printing and mailing and an expansive suite of complementary forwarding-thinking digital marketing solutions to a large and fast growing group of clients in a variety of industries, including the health care, utility, municipality, financial services, real estate and heating oil/propane markets. To learn more about OSG and Diamond, please visit their websites at www.osgbilling.com and www.dmsolutions.com, respectively.

In connection with the Transaction, we write to notify you that, effective as of the closing of the Transaction (the "**Closing**"), anticipated to take place in the third quarter of this year, assuming all approvals are received and all other conditions to Closing of the Transaction are satisfied or waived, we intend to assign the Agreement, including the assignment of all of our rights and obligations and the delegation of all of our performance under the Agreement, to Diamond. Diamond would assume all of our rights and obligations and agree to be bound by all the terms of the Agreement effective as of and from and after the Closing (such assignment and delegation, the "**Assignment**").

As part of the Transaction, we and Diamond are entering into a Transition Services Agreement pursuant to which we will continue to service your account on behalf of Diamond for

¹ Please use full name of each agreement if Service Agreement is not the correct name of the Assigned Contract

a period of time to ensure a smooth transition of the business such that you should not experience any changes to your account or level of service.


In accordance with the Agreement, we hereby request your irrevocable consent to the Assignment and waiver of your rights under the Agreement resulting from or related to the Assignment. Notwithstanding any provision in this consent, the Agreement or the Assignment to the contrary, by executing this consent, you acknowledge and agree that we have not and will not be deemed to have breached or violated any provision of the Agreement and are not in default of any of our obligations under the Agreement.

Please sign this letter below to acknowledge your review of its contents, and your irrevocable consent to the Assignment and related waiver and acknowledgment, and return a PDF copy to me via email at skain@divdat.com. Because the Transaction is scheduled to close in the third quarter of this year, we ask that you send us the signed consent **as soon as possible but no later than Friday, July 27, 2018**. It is our great privilege to serve you and we are thankful for the trust you have placed in us. We strongly believe that our new relationship with Diamond will create the best possible combination of resources and focus that will enable us to provide the highest level of service to you in the future. We seek your continued support and will work diligently to be worthy of it.

If you have any questions regarding the Assignment or this request for consent, please call me at (800) 356-8561, extension 369, or email me at skain@divdat.com. If you would also like to speak to a representative of Diamond, please contact me and I will be happy to arrange for you to do so.

We appreciate your assistance and thank you in advance for your prompt attention to this matter.

Very truly yours,
DIVERSIFIED DATA PROCESSING &
CONSULTING, INC.

By: _____

Name: Samuel J. Kain

Title: CFO

Date: July 17, 2018

The undersigned hereby consents to the
Assignment and waiver of rights described
above as of the date set forth below:

County of Los Alamos

By: _____

Name: _____

Title: _____

Date: _____, 2018



AGR17-01

**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Diversified Data Processing & Consulting Inc., dba DivDat**, a Michigan corporation ("Contractor"), to be effective for all purposes March 1, 2017.

WHEREAS, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 17-01 ("RFP") on June 12, 2016, requesting proposals for Bill Printing, Mailing and Electronic Billing Notification Services for Utilities, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated June 26, 2016 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

WHEREAS, the Los Alamos County Board of Public Utilities approved this Agreement at a public meeting held on January 18, 2017; and

WHEREAS, the County Council approved this Agreement at a public meeting held on January 31, 2017; and

WHEREAS, Contractor will provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

Contractor Services

- 1. Monthly Utility Statements** – Contractor will laser print, insert and mail monthly utility statements and past due notices no less than two (2) times per week after receipt from County of magnetic media or electronic transmission containing data necessary to produce the statements or past due notices. County will provide data in a pre-determined format agreed to by both parties. County will determine and notify Contractor of dates data will be provided to Contractor. Pricing for this Service is as provided in Exhibit "A" attached hereto.
- 2. Inserts** - Contractor shall insert with the monthly utility statements and past due notices additional materials received from County not later than three (3) business days before Contractor receives from County the data for monthly statements and notices. All such additional County provided inserts and materials shall meet Contractor's insert specifications. Contractor shall notify the County immediately by telephone if the insert materials provided by County do not meet Contractor's insert specifications or if additional materials are not timely



received by Contractor. Contractor shall insert additional materials that do not meet Contractor's insert specifications, and at additional costs to the County, only on the express request of County made following notice from Contractor and the parties have agreed upon the additional charge, if any, for manual insertion of the materials.

3. **Equipment and Materials** - Contractor shall provide all labor, warehousing, equipment and materials necessary to perform the Services.
4. **Reports and Information** - Within ten (10) days after request by County, Contractor shall provide to County any and all reports that may be generated automatically related to the data provided by County or any other such report as deemed reasonably necessary by County.
5. **Electronic Bill Presentation and Payment** - At customers request to the Department of Public Utilities ("DPU"), and after enrolling in DPU's electronic bill program, Contractor will generate an electronic version of the bill for DPU's customers that have elected to participate in the e-Billing program. Contractor will notify customer via email when the electronic bill is ready to be viewed and will include an appropriate link for customer to pay the bill via DPU's established payment system.
6. **Integration with Mobile Application** - DPU is currently engaged in deployment of Smart Utility System's Smart Customer Mobile application, through which customers can retrieve consumption and billing information, and through which customers can view and pay their bill. Contractor will coordinate and integrate with the Smart Customer Mobile application as determined necessary to facilitate deployment of that application.

SECTION B. TERM: The term of this Agreement shall commence March 1, 2017 and shall continue through February 28, 2021, unless sooner terminated, as provided herein. At County's sole option this Agreement may be renewed for up to three (3) consecutive one-year periods, unless sooner terminated, as provided herein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount **not to exceed** FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00 US), which amount does not include applicable New Mexico gross receipts taxes ("NMGR"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice. All disputes related to performance and payment shall be governed by the County's Procurement Code, Chapter 31.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGR levied on the amounts payable under this Agreement

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing the County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or

compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that exceeds the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.

3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request. Contractor shall not use the County-provided logo in any manner except with prior written permission from County.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit,

demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Project Manager/Management Analyst
Incorporated County of Los Alamos
Department of Public Utilities
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544

Contractor:

Jason Bierkle, President
Diversified Data Processing & Consulting
Inc., dba DivDat
1081 Northend Avenue
Ferndale, Michigan 48220

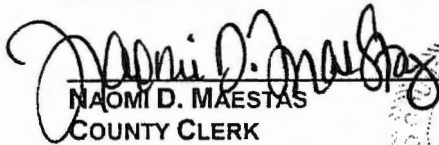
SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

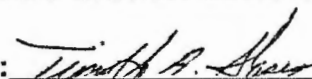
IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS


NAOMI D. MAESTAS
COUNTY CLERK

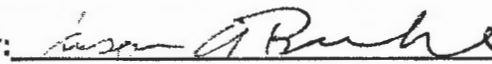


BY:  2-1-17
TIMOTHY A. GLASCO, PE DATE
UTILITIES MANAGER

Approved as to form:


J. ALVIN LEAPHART
COUNTY ATTORNEY

DIVERSIFIED DATA PROCESSING & CONSULTING INC.,
DBA DIVDAT, A MICHIGAN CORPORATION

BY:  2/9/17
DATE

**Exhibit A
AGR17-01
Cost Summary Sheet**

5. Unit Costs (to include set-up/artwork costs), based on the following:

- a. Paper (perforated) – per page price
- b. Carrier envelopes – price per each
- c. Return envelopes – price per each
- d. Laser printing – per page price
- e. Insertion cost – price per each
- f. Cost for email bill notification
- g. Cost for paper bills mailed for undeliverable emails

FIRST CONTRACT YEAR PRICING

Print & Mail Pricing	
Statement Description: <ul style="list-style-type: none"> Approximate Monthly Volume: 9,000 Regular bills 8.5 x 14, 24#, 3/1 regular Standard single-window #9 remittance and double window #10 envelopes. All variable data is laser printed in black, simplex. File transfer, data processing, CASS certified address validation, folding, inserting, metering, delivery to USPS 	Cost Per Item Processed:
Data Processing/Mail Prep Services/Mail delivery	\$0.0431
8.5 x 14 24# Custom 3 color 1 sided form w/perf	\$0.033 Billed at Cost
Standard #10 Envelope	\$0.0152 Billed at Cost
Standard #9 Envelope	\$0.0136 Billed at Cost
Laser Printing	<u>\$0.0245</u>
Total per one page bill	\$0.1294
Other Services:	
Print Image Archiving (12 Months)	\$0.015 per bill
Additional Pages (multipage bills)	\$0.05 (on white stock)
Address Update- ACS	\$0.16 per hit (per address actually updated)
eBill email notification	\$0.05
PDF bill	Included in archiving
Bills sent for Undeliverable emails	Same as above, higher postage may apply due to not meeting pre-sort levels set by the USPS