

Meeting Date: 9/3/2013

Report Type: Consent

Report ID: 2013-00276

Title: Contract: Postage Meter Equipment Rental and Prepaid Postage (Two-Thirds Vote Required)

Location: Citywide

Issue: This report recommends actions necessary to authorize expenditures for prepaid postage and related equipment and services in support of City departments.

Recommendation: Pass 1) a Resolution suspending competitive bidding, in the best interests of the City, for the purchase of prepaid postage and related equipment and services from Pitney Bowes during FY 2013/14; and 2) a Motion awarding a contract to Pitney Bowes for prepaid postage and related equipment and services during FY2013/14, in an amount not-to-exceed \$360,000, which includes the City's existing purchase order with Pitney Bowes for \$90,000.

Contact: Reina J. Schwartz, Director, (916) 808-7195, Department of General Services

Presenter: None

Department: General Services

Division: Office of the Director

Dept ID: 13001021

Attachments:

1-Description/Analysis

2-Resolution

3-Agreement

City Attorney Review

Approved as to Form

Joe Robinson

8/20/2013 9:20:46 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt

Russell Fehr

8/2/2013 9:57:31 AM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 8/15/2013 9:14:23 AM

Description/Analysis

Issue Detail: The Department of General Services' (DGS) Central Services section provides US mail services to City departments. This includes providing access to Pitney Bowes postage meter equipment with prepaid postage for convenient stamping of US mail. This report recommends actions necessary to authorize expenditures for prepaid postage, related equipment (postage machines and meters), and maintenance services, with Pitney Bowes through the end of FY 2013/14.

Policy Considerations: The recommendation in this report is in accordance with City Code Chapter 3.56 regarding the suspension of competitive bidding, which allows the City Council to suspend competitive bidding, on a 2/3 vote, if the City Council determines it is in the best interests of the City to do so.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): No environmental review is necessary because the recommendations in this report involve the ongoing purchase of supplies and are not considered to be a project in accordance with Section 15378(b)(2) of the CEQA Guidelines.

Sustainability: Not applicable

Commission/Committee Action: None

Rationale for Recommendation: DGS Central Services provides US mail services to City departments. This includes providing access to Pitney Bowes postage meter equipment with prepaid postage for convenient stamping of US mail. This report recommends actions necessary to authorize expenditures with Pitney Bowes in support of City departments.

Staff is proposing that a contract be awarded to Pitney Bowes without competitive bidding. Staff believes that it is in the best interests of the City to suspend competitive bidding for expenditures for prepaid postage and related equipment and services, in order to award a contract to Pitney Bowes, for the following reasons:

- Central Services has experience with at least one other vendor but has found that Pitney Bowes offers superior service.
- Central Services previously purchased Pitney Bowes mail equipment, which requires that postage also be purchased from Pitney Bowes.
- Approximately 95% of the cost of this contract is a pass-through for the cost of prepaid postage with the U.S. Postal Service.
- The City receives a discount on the pre-paid postage costs through Pitney Bowes, because the City pays only \$0.40 rather than \$0.46 for each standard letter size envelope mailed with postage purchased from Pitney Bowes.
- The City currently is using Pitney Bowes, and continuing with Pitney Bowes at this time will prevent an interruption of this critical service to City departments.

The market for prepaid postage has changed recently to now include on-line providers. Therefore, during FY2013/14 DGS will work with the Department of Finance, Procurement Services Division to investigate all procurement options for postage and related equipment, and develop a procurement strategy for FY2014/15 and beyond.

Financial Considerations: This report recommends award of a contract in the amount of \$360,000 to Pitney Bowes. This includes the City's existing purchase order with Pitney Bowes for \$90,000. This amount was determined based on a review of historical expenditures and a consideration of future needs, and includes estimated expenditures for prepaid postage in the amount of \$340,000, mailing equipment rental in the amount of \$10,000, and mailing equipment maintenance services in the amount of \$10,000. As noted above, approximately 95% of the total cost is a pass-through for prepaid postage.

Funding for these purchases will initially be provided by DGS (General Fund, Fund 1001). Usage by departments is then tracked on a monthly basis and departments or capital improvement projects that utilize the service are charged for their share of the cost. Sufficient funding is available in the FY2013/14 department operating and capital project budgets for purchases through June 30, 2014.

Emerging Small Business Development (ESBD): Pitney Bowes is not certified as an emerging/small business.

RESOLUTION NO. 2013-XXXX

Adopted by the Sacramento City Council

August 20, 2013

SUSPENDING COMPETITIVE BIDDING FOR PURCHASE OF PREPAID POSTAGE AND RELATED EQUIPMENT AND SERVICES

BACKGROUND

- A. The Department of General Services' Central Services section provides US mail services to City departments. This includes providing access to Pitney Bowes postage meter equipment with prepaid postage for convenient stamping of US mail.
- B. City staff recommends awarding a contract to Pitney Bowes for the purchase of prepaid postage and related equipment and maintenance services during FY 2013/14 on a sole source basis, instead of competitively bidding the contract.
- C. The City Code authorizes the City Council to suspend competitive bidding when, upon a two-thirds vote, the City Council determines it is in the best interests of the City to do so.
- D. Suspending competitive bidding for the purchase of prepaid postage and related equipment and maintenance services from Pitney Bowes is in the best interests of the City for the following reasons:
 - Central Services has experience with at least one other vendor but has found that Pitney Bowes offers superior service.
 - Central Services previously purchased Pitney Bowes mail equipment, which requires that postage also be purchased from Pitney Bowes.
 - Approximately 95% of the cost of this contract is a pass-through for the cost of prepaid postage with the U.S. Postal Service.
 - The City receives a discount on the pre-paid postage costs through Pitney Bowes, because the City pays only \$0.40 rather than \$0.46 for each standard letter size envelope mailed with postage purchased from Pitney Bowes.
 - The City currently is using Pitney Bowes, and continuing with Pitney Bowes at this time will prevent an interruption of this critical service to City departments.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. In the best interests of the City, competitive bidding is suspended for the purchase of prepaid postage and related equipment and services from Pitney Bowes during FY 2013/14.

CONTRACT

City of Sacramento Purchase Order No. **20763**
Services/Supplies: **Postage and Postal Services**

THIS CONTRACT is made and entered into on _____, 2013, by and between the City of Sacramento, a municipal corporation ("City") and Pitney Bowes, Inc., a Delaware corporation headquartered in Stamford, Connecticut ("Contractor"), who agree as follows:

City shall purchase, and Contractor shall supply, in accordance with the above-referenced Purchase Order, and the attached Pitney Bowes Terms, which are incorporated herein by this reference, the following supplies and/or services:

Pre-paid postage and mailing equipment rental and maintenance in the Department of General Services through June 30, 2014

Contract amount not-to-exceed: \$360,000.00

Executed as of the date stated above.

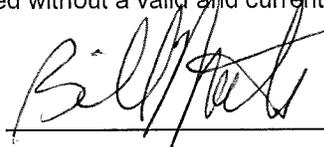
CONTRACTOR: **Pitney Bowes, Inc.**

Address: 1 Elmcroft Road, Stamford CT 06926

Phone #: 480-206-2984 Fax #: 203-460-5758 Email: bill.walter@pb.com

State Tax I.D. #: _____ Fed. Tax I.D. #: 06-0495050

City of Sacramento Business Operation Tax Certificate #: 3953
(Contract award will not be processed without a valid and current Certificate Number.)

By: (signature of authorized person)  _____

Print Name: Bill Walter Title: Government Channel Manager

CITY OF SACRAMENTO

By: _____

Print Name/Title: _____
For: John F. Shirey, City Manager

Approved As To Form:

Attest:

City Attorney

City Clerk



City of Sacramento
 Procurement Services Division
 915 I Street 2nd Floor
 Sacramento CA 95814
 United States

Purchase Order

CHANGE ORDER - REPRINT		Dispatch via Phone	
Purchase Order	Date	Revision	Page
SACTO-0000020763	07/09/2013	3 - 08/08/2013	1
Payment Terms	Freight Terms	Ship Via	
Net 30	Dest, Frt, Prepaid/Allowed	No Ship	
Buyer	Phone	Currency	
O'Neill, Gary	916 8087432	USD	

PITNEY PURCHASE POWER
 PO BOX 371874
 PITTSBURGH PA 15250-7874

Ship To: CENT SERV
 CENTRAL SERVICES
 CITY HALL
 915 I STREET, FIRST FLOOR
 SACRAMENTO CA 95814
 United States

Bill To: CENTRAL SERVICES
 CITY HALL
 915 I STREET, FIRST FLOOR
 SACRAMENTO CA 95814
 United States

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The Following Specifications Apply to the Entire Order:

Customer account #2026-9637-86-2

Tax Exempt? N Tax Exempt ID: Vendor: 0000005335

Line-Sch	Item/Description	Taxable	Quantity	UOM	Extended Amt	Due Date
1- 1	PAYMENTS TO THE U.S.P.S. FOR DOWNLOADS OF POSTAGE TO TWO (2) PITNEY BOWES MAILING MACHINES USED IN CENTRAL SERVICES. AS REQUIRED THROUGH 06/30/2014; NOT TO EXCEED THE AMOUNT STATED ON THIS P.O. - Serial number 4391945 - Serial number 4391915	N	1,000	OPN	340,000.00	06/30/2014

Item Total 340,000.00

Total PO Amount 340,000.00

Smilata

GENERAL TERMS

The following provisions apply to any transaction you enter into with Pitney Bowes. Other provisions in the Pitney Bowes Terms may also apply, depending on your transaction. Please read these provisions carefully as they constitute part of your agreement with Pitney Bowes.

G1. HOW TO CONTACT US

- G1.1 To obtain Maintenance Service, please either:
- (a) place a request for service on PBI's website at www.pb.com, under Customer Support; or
 - (b) call PBI's toll-free response center (the "Customer Care Center") at 1-800-522-0020 (Monday - Friday, 8am - 8pm ET, excluding PBI-observed U.S. holidays).
- G1.2 In the event you wish to cancel your Meter rental or you do not wish to renew your Maintenance Service after the Initial Term, please send written notice by mail to: Pitney Bowes Inc., 2225 American Drive, Neenah, WI 54956. (See Section S4.3 for details).
- G1.3 To cancel your Soft-Guard® Subscription, please contact us at 1-800-228-1071 (Monday - Friday, 8:30am - 5:30pm CT, excluding PBI-observed holidays).

G2. DEFINITIONS

The following terms mean:

"Agreement" - the Order, any applicable terms and conditions referred to in the Order and any attached exhibits.

"Bank" - The Pitney Bowes Bank, Inc.

"Consumable Supplies" - ink, ink rollers, toner and drum cartridges, ribbons and similar items. Product-specific consumable supplies are identified in the product operator guide.

"Covered Equipment" - the equipment leased, rented or sold to you from PBGFS or PBI that is covered by the SLA as stated on the Order. Covered Equipment does not include any IntelliLink® Control Center or Meter, or any standalone software.

"Delivery Date" - the date the Equipment or other Item is delivered to your location.

"Effective Date" - the date the Order is received by us.

"Equipment" - the equipment listed on the Order, excluding any IntelliLink Control Center or Meter, and any standalone software.

"Initial Term" - the period listed on the Order.

"Initial Service Term" - the twelve (12) months immediately following the start of the Lease, or longer as provided on the Order.

"Install Date" - the date the Equipment or other item is installed at your location.

"IntelliLink Control Center" or **"Meter"** - any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+® mailing system, the postal security device, the application platform, the system controller and the print engine and (ii) in the case of all other mailing systems, the postal security device, the user interface or keyboard and display and the print engine.

"Lease" - the Order and the Lease terms and conditions attached to the Order.

"Lease Term" - shall have the meaning stated in the Lease.

"Maintenance Service" - the maintenance service option for the Covered Equipment selected by you on the Order, excluding software maintenance and maintenance for Usage-based Equipment.

"Normal Working Hours" - 8 a.m. - 5 p.m., Monday - Friday, excluding PBI-observed U.S. holidays, in the time U.S. zone where the Equipment or other items are located.

"Order" - the executed agreement between the applicable Pitney Bowes company and you for the equipment covered by the Order.

"PBGFS" - Pitney Bowes Global Financial Services LLC.

"PBI" - Pitney Bowes Inc.

"PBI Equipment" - PBI-branded equipment.

"Pitney Bowes" - PBI, PBGFS and their respective subsidiaries.

"Shipment Date" - the date the Equipment leaves our facility or our agent's facility for delivery to you.

"SLA" - the Service Level Agreement.

"SOW" - a Statement of Work you enter into with us.

"Third Party Equipment" - equipment manufactured by a party other than us.

"Usage-based Equipment" - equipment where charges are based on volume of use.

"We," "Our," or **"Us"** - the Pitney Bowes company with whom you've entered into the Order.

"You," "Your," or **"Customer"** - the entity identified on the Order.

G3. WARRANTY

- G3.1 (a) PBI warrants that the PBI Equipment will be free from defects in material and workmanship and will perform according to the equipment user guide for a period of ninety (90) days from the Install Date (the "Warranty Period").
- (b) PBI warrants that the Maintenance Service provided will be performed in a professional and workmanlike manner.
- (c) **As your sole remedy in the event of a warranty claim, we will either repair or replace the Equipment or, in the case of defective Maintenance Service, reperform the Maintenance Service.**
- (d) A "defect" does not include the failure of rates within a rate update to conform to published rates.
- (e) There is no warranty for Equipment requiring repair or replacement because of your negligence, usage which exceeds PBI's recommendations, damage in transit, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, or service by anyone other than PBI. There is no warranty for Equipment arising from the use of third party supplies (such as ink) that results in: (i) damage to PBI Equipment; (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images.
- (f) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with the PBI Equipment may be reclaimed, reconditioned or remanufactured. Any such item is warranted to perform according to the same standards as the equivalent new item.
- (g) The warranty does not cover Consumable Supplies.

G3.2 **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED.**

G3.3 **THIRD PARTY EQUIPMENT.** PBI MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. PBI AGREES TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT SUCH WARRANTIES ARE TRANSFERABLE.

G4. LIMITATION OF LIABILITY

- G4.1 PBI'S TOTAL LIABILITY (INCLUDING ANY LIABILITY OF ITS SUPPLIERS) IS LIMITED TO THE FEES PAID BY YOU TO PBI FOR THE APPLICABLE EQUIPMENT OR SERVICES IN THE 12 MONTHS BEFORE THE EVENT THAT GIVES RISE TO THE CLAIM, EXCEPT FOR THE LIQUIDATED DAMAGES THAT MAY BE APPLICABLE TO PERFORMANCE SLA (SEE SECTION S2.2).
- G4.2 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE EQUIPMENT, OR YOUR NEGLIGENT ACTS OR OMISSIONS.
- G4.3 NEITHER PBI NOR ITS SUPPLIERS IS LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA, OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

G5. DEFAULT AND REMEDIES

- G5.1 **Default.** You are in immediate default if you do not make any payment when due, you breach any other obligation under this Agreement, you become insolvent or file for bankruptcy, or are in default under any agreement with PBI or PBGFS.
- G5.2 **Remedies.** Upon your default, we may:
- (a) cancel this Agreement and any other agreements PBGFS or PBI has with you;
 - (b) require immediate payment of all payments due under a Lease(s) or other agreements, whether accrued or due in the future;
 - (c) disable the IntelliLink Control Center or Meter;
 - (d) require you to return the Equipment and IntelliLink Control Center or Meter;
 - (e) if you do not return the Equipment and IntelliLink Control Center or Meter, require you to make immediate payment of an amount equal to the remaining value of the Equipment, IntelliLink Control Center or Meter at the end of the Lease Term, as determined by us;
 - (f) charge you a late charge for each month that your payment is late;
 - (g) charge you interest on any late payment from its due date until paid in full at the lesser of 18% per year or the maximum rate allowed by law;
 - (h) charge you a check return fee for payments made by you with insufficient funds;
 - (i) reasonably attempt to mitigate our damages and costs in the event of your default, although you acknowledge that we are not obligated to do so; and
 - (j) pursue any other remedy, including repossessing the Equipment without notice to you. By repossessing the Equipment, IntelliLink Control Center or Meter, we are not waiving our right to collect the balance due.
- G5.3 **Enforcing Our Rights.** You agree to pay all our costs, including attorneys' fees, in enforcing our rights under the Agreement with you.
- G5.4 **Suspension of Services.** PBI reserves the right to suspend any services during any period in which your account is more than thirty (30) days past due.
- G6. TAXES**
- G6.1 You agree to pay Pitney Bowes for all charges and taxes (other than taxes on or measured by net income), calculated as set forth below, related to the Lease or based on or measured by the lease transaction, payments under the Lease, the Equipment or Equipment location, the Meter or Meter location or services provided in connection with the lease transaction, including but not limited to sales/use and property type taxes. Pitney Bowes will determine the value of the Equipment, the value of the Meter and the amount of such taxes to be charged to you. Such determinations will reflect a reasonable value of the Equipment or of the Meter or the actual taxes and depreciation thereon. The taxes and depreciation to be charged on the Equipment and the Meter may reflect certain average tax rates, different depreciation schedules or some other calculation. You agree to pay a processing, billing and tracking fee and administrative charge

to be determined by Pitney Bowes which may not bear a relationship to the tax charged or services performed, but such fee and charge shall in no event exceed in the aggregate \$35 for each year for each Lease schedule.

G7. EMBEDDED SOFTWARE

- G7.1 Our Equipment may contain embedded software. You agree that: (i) PBI and its licensors own the copyrights and other intellectual property in and to the embedded software; (ii) you are licensed only to use the embedded software with our Equipment in which the embedded software resides; (iii) you will not copy, modify, de-compile, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; (iv) you will not distribute or otherwise disclose the embedded software (or any portion thereof) to any other person; and (v) you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software, which, notwithstanding the above, is subject to any terms that may accompany such third party software.

G8. INTERNET ACCESS POINT

- G8.1 The Connect+ Series Equipment may use an internet access point (e.g., wireless router) provided by us. You may only use this access point for connectivity between the Connect+ Series Equipment and the internet and for no other purpose. You agree to pay all costs associated with use of the access point in violation of this restriction.

G9. MISCELLANEOUS

- G9.1 **Force Majeure.** We are not responsible for any delay or failure to perform resulting from causes beyond our control.
- G9.2 **Assignment.** You may not assign this Agreement without our prior written consent, which consent shall not be unreasonably withheld. Any purported assignment is void.
- G9.3 **No Right to Setoff.** Payments are not subject to setoff or reduction.
- G9.4 **Legal Action.** ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE (1) YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT.
- G9.5 **Merger; Amendment; Severability.** The Agreement incorporates all of the terms agreed by both parties and can only be changed by written agreement. You may use a purchase order to offer to obtain Equipment or services but you agree that none of the provisions of your purchase order will add to, modify or supersede these provisions unless we expressly agree in writing. If one or more provisions of this Agreement are deemed to be invalid or unenforceable, the remaining provisions will not be affected.
- G9.6 **Survival.** Our respective rights and obligations under Section G4 (Limitation of Liability), G5 (Default and Remedies) and G6 (Taxes) survive termination of the Agreement.
- G9.7 **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws principles.

SERVICE LEVEL AGREEMENT (SLA)

The following provisions describe the Service Level Agreement ("SLA") options that PBI offers on Covered Equipment (excluding software and Usage-based Equipment). The SLA option you select will be listed on the Order. A separate Software License and Maintenance Agreement ("SMA") covers software maintenance and will be attached to the Order if you are acquiring software. A separate maintenance agreement covers maintenance on the Usage-based Equipment and will be attached to the Order if you are acquiring Usage-based Equipment.

S1. DEFINITIONS

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

S2. SERVICE LEVEL OPTIONS

The following describes the two SLA options offered by PBI for the Covered Equipment.

S2.1 Standard SLA

- (a) **General.** Under this option, PBI will provide at its option either repair or replacement services for the Covered Equipment during the Initial Service Term or any Renewal Service Term (as defined in Section S4.2) (the

"Maintenance Service Term"). You are also entitled to two preventative maintenance service calls per calendar year. PB will notify you when preventative maintenance is due or preventative maintenance service calls may be made at your initiation.

- (b) **Obtaining Service.** You can obtain service online or by telephone as set forth in the "How to Contact Us" section of the General Terms.
- (c) **Replacement Service.**
- (i) If PBI determines that replacement is necessary, PBI will, at no additional cost, promptly ship new, reconditioned, or remanufactured equipment of the

- same or a functionally equivalent model to replace the affected Covered Equipment.
- (ii) Within five (5) days of receiving the replacement equipment, you must pack the Covered Equipment to be replaced in the shipping carton that contained the replacement equipment, place the pre-paid return address label on the carton, and return it to PBI.
 - (iii) You are responsible for the return of Covered Equipment until PBI receives it.
- (d) Repair Service.
- (i) If PBI determines that repair service is necessary, PBI may provide repair by remote access, diagnostics and coordinated remote service, or by on-site repair service.
 - (ii) Repair service is provided only for damage resulting from normal wear and tear. Repair service may include the use of new, reconditioned, or remanufactured parts and assemblies.
 - (iii) PBI will provide parts or assemblies for discontinued equipment (or equipment not marketed as new) only if available.
 - (iv) If PBI deems it necessary, PBI will dispatch a service technician to arrive at your location for on-site service. You will not incur hourly charges unless service is performed outside Normal Working Hours, which will be done only with your consent.
- (e) Additional Covered Items. PBI will provide printheads for Covered Equipment without additional charge, except for printheads which need to be replaced as a result of the circumstances described in Section S7.1(a)(ii).
- S2.2 Performance SLA
- (a) General. If you select this option, PBI will provide the following support:
- (i) All coverage provided under Standard SLA, PLUS:
 - (ii) Discount on billable professional services related to the Covered Equipment requested by you and agreeable to us. Billable professional services is additional labor that is not covered by the Standard SLA and includes but are not limited to ongoing equipment training services on how to use the Covered Equipment.
 - (iii) Quarterly performance reports consisting of service request and response time history made available quarterly in Customer's secured MyAccount site at www.pb.com.
 - (iv) Advisory workshop is limited to one two hour application consultation for your customer communications management and/or shipping solution needs.
 - (v) Admission to a mail management seminar delivered by Pitney Bowes - limited to admission for one individual for one seminar.
- (b) Response Time Commitment.
- (1) If PBI determines that on-site service is necessary, PBI will use commercially reasonable efforts to have a service technician on-site (during Normal Working Hours only) within 4 hours or 8 hours, as selected by you on the Order, after PBI has determined that it cannot resolve the issue remotely (the "Response Time Commitment").
 - (2) The Response Time Commitment relates solely to the arrival of a technician at your location; it is not a guaranteed resolution of the problem within the Response Time Commitment period, nor does it guarantee that all parts necessary to make a repair will be on-site within this time frame.
 - (3) The Response Time Commitment does not apply to Service designated as service by replacement, software maintenance, preventive maintenance, operator training, or other services not essential to repair the Covered Equipment. These services will be scheduled in advance.
 - (4) If the Covered Equipment is moved from its original location, PBI may remove the Response Time

- Commitment. If this happens, you will receive a refund equal to the difference between the cost of the Response Time Commitment and the cost of maintenance coverage without this obligation.
- (iv) Liquidated Damages for Failure to Meet Response Time.
- (1) PBI agrees that if it does not meet the Response Time Commitment, PBI will provide you with a credit equal to three (3) months of the cost of the premium of the Response Time Commitment.
 - (2) You must use a credit request form in order to request a credit. You may obtain a credit form from your service technician or by calling the Customer Care Center. The credits are limited to credits for four (4) failures to meet the Response Time Commitment in any twelve (12) month period during the Maintenance Service Term. **The remedies described in this Section are your sole remedy for PBI's failure to meet the Response Time Commitment.**
- S2.3 Connect+ Advantage
- (a) If you select Connect+ Advantage, PBI will provide: the support specified in the description of Connect+ Advantage contained in the Connect+ Advantage Solution Summary provided to you and: either the coverage provided under Standard SLA, or under Performance SLA, as selected by you on the Order.
 - (b) Connect+ Advantage is only available for items listed with a # next to the description.
- S3. FEES
- S3.1 You will pay the fees for the Initial Service Term, and any Renewal Service Term(s). These fees are incorporated into your payment cycle (e.g., Quarterly Payment for leased equipment).
- S3.2 Late Fees. Our remedies for your failure to pay on time are set forth in the "Default; Remedies" section of the General Terms.
- S3.3 Fees for Services Not Covered by this SLA. If the service technician provides service for repairs caused by one of the conditions listed in Section S6.1(a)(ii), PBI will charge you for the service at PBI's current hourly rates and for any required parts.
- S4. MAINTENANCE SERVICE TERM
- S4.1 Term. PBI will provide you with Maintenance Service for the Initial Service Term and any Renewal Service Terms.
- S4.2 RENEWAL SERVICE TERM(S). MAINTENANCE SERVICE AUTOMATICALLY RENEWS FOR CONSECUTIVE ONE (1) YEAR TERMS (EACH, A "RENEWAL SERVICE TERM"), UNLESS:
- (a) YOU TERMINATE MAINTENANCE SERVICE AS SPECIFIED IN SECTION S4.3 AT LEAST SIXTY (60) DAYS PRIOR TO THE RENEWAL OF THE TERM; OR
 - (b) YOUR LEASE EXPIRES OR IS TERMINATED (IN WHICH CASE, THE MAINTENANCE SERVICE TERM WILL TERMINATE ON THE SAME DAY AS THE LEASE); OR
 - (c) THE RENEWAL IS PROHIBITED BY APPLICABLE LAW.
- S4.3 Ending Your Maintenance Service.
- (a) If you do not wish to renew Maintenance Service, you must deliver a written notice (including your account number) (the "Termination Notice") by Certified Mail™ to the address listed in the "How to Contact Us" section of the General Terms. Your Termination Notice must include your customer account number and lease number (if applicable), and is effective ten (10) business days after PBI receives it.
 - (b) PBI reserves the right not to renew your SLA at any time and for any reason.
- S4.4 Maintenance Service Changes.
- (a) PBI may modify its Maintenance Service by giving written notice to you (a "Maintenance Change Notice"), which will state whether the change is material.

- (b) After receiving a Maintenance Change Notice, if the change is material, you may terminate Maintenance Service as described in Section S4.3 above.

S5. WARRANTIES; LIMITATION OF LIABILITY

S5.1 The warranty for the Equipment and services as well as PBI's Limitation of Liability are set forth in the applicable section of the General Terms.

S6. EQUIPMENT/METER COVERAGE

S6.1 You cannot elect to have Maintenance Service apply to some but not all of the items of Equipment. If you choose not to cover all items of Equipment under Maintenance Service, we reserve the right to terminate Maintenance Service for all the Equipment.

S7. ADDITIONAL MAINTENANCE TERMS

S7.1 These terms apply to all Maintenance Service options:

- (a) Limitations. Maintenance Service does not include:
- (i) software maintenance and/or updates and maintenance on Usage-based Equipment; and
 - (ii) services and repairs that are made necessary due to:
 - (A) negligence or accident, damage in transit, virus contamination and loss of data;
 - (B) use of Covered Equipment in a manner not authorized by this SLA or the Equipment user guide;
 - (C) natural causes such as fire or flood as well as other causes outside of PBI's control;
 - (D) use of Covered Equipment in an environment with unsuitable humidity and/or line voltage;
 - (E) loss of electrical power, power fluctuation, operator error;
 - (F) sabotage, repair or attempted repair by anyone other than PBI;

- (G) the use of third party supplies (such as ink), hardware, or software resulting in: (i) damage to the Equipment (including, without limitation, damage to printheads); (ii) poor indicia, text, or image print quality; (iii) indicia readability failures; or (iv) a failure to print indicia, text, or images;

- (H) failure to use applicable software updates; or
- (I) use of Covered Equipment with any system for which PBI has advised it will no longer provide support or has advised is no longer compatible.

(b) Additional Exclusions. Unless covered under one of the above maintenance options, Maintenance Service excludes the supply of rate program software for electronic scales and weighing systems, software maintenance and/or updates and Consumable Supplies for all levels of service.

(c) Replacement Equipment.

- (i) If you replace any of your Covered Equipment during the Maintenance Service Term, and the replacement Equipment qualifies for maintenance services, PBI will automatically enroll you for maintenance coverage on the new Equipment at PBI's then current annual rates.
- (ii) If you acquire an attachment, or add a unit, to your Covered Equipment, PBI will provide coverage for any qualifying attachment or unit and adjust your rate accordingly.
- (iii) If you choose not to continue coverage on the replacement Equipment, attachment or unit, you may cancel Maintenance Service with respect to the item within thirty (30) days of the date of your initial invoice for the item from PBI. If you cancel, any further maintenance or repair services on the Equipment, attachment or unit will be subject to PBI's current rates.

EQUIPMENT AND POSTAGE METER RENTAL TERMS AND CONDITIONS

The following provisions apply whenever you acquire an IntelliLink® Control Center or Meter from Pitney Bowes. Other terms may also apply, depending on the transaction.

R1. DEFINITIONS

All capitalized terms that are not defined in these provisions are defined in the "Definitions" section of the General Terms.

R2. EQUIPMENT RENTAL AND INTELLILINK® SUBSCRIPTION (METER RENTAL)

R2.1 Fees.

- (a) If you are not leasing the Equipment and paying for it in your lease payment to PBGFS, we will invoice you the Equipment rental ("rental") and IntelliLink Subscription fees listed on the Order.
- (b) After the Initial Term, we may increase the rental and IntelliLink Subscription fees upon 30 days' prior written notice.
- (c) When you receive notice of an increase, you may terminate your rental only as of the date the increase becomes effective.

R2.2 Postage.

- (a) To obtain postage for your Meter, you must contact our Postage By Phone® data center.
- (b) You may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account that you maintain at the Bank ("your Reserve Account") or you may transfer funds to the United States Postal Service ("USPS") through a lockbox bank ("Lockbox Bank"). See the "USPS Acknowledgment of Deposit" section of the General Terms for more information.
- (c) After the Initial Term, we may increase postage refill fees upon 30 days prior written notice.
- (d) If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power®), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage

advance program and billed separately from your IntelliLink Subscription fees.

R2.3 Meter Repair or Replacement.

- (a) If the Meter malfunctions or fails due to reasons other than your negligence or accident, usage which exceeds our recommendations, damage in transit, virus contamination or loss of data, misuse, external forces, loss or fluctuation of power, fire, flood, or other natural causes, service by anyone other than us, or the use of third party supplies (such as third party ink) resulting in damage to the Meter, we will repair or replace the Meter.

R2.4 Terms of Use; Federal Regulations.

- (a) You may use the Meter solely for the purpose of processing your mail, provided that you are authorized by the USPS to use the Meter, and that you comply with (i) this Agreement, (ii) any user documentation and (iii) all USPS regulations.
- (b) You agree to use the Equipment and Meter only for business or commercial purposes, and not for personal, family, or household purposes.
- (c) You agree to use only attachments or printing devices authorized by us.
- (d) You must receive our written consent before moving the Equipment or Meter to a different location.
- (e) Federal regulations require that we own the Meter.
- (f) Tampering with or misusing the Meter is a violation of federal law.
- (g) Activities of the USPS including the payment of refunds for postage by the USPS to customers will be made in accordance with the current Domestic Mail Manual.
- (h) If the Meter is used in any unlawful scheme, or is not used for any consecutive 12 month period, or if you take the Meter or allow the Meter to be taken outside the

United States without proper written permission of USPS Headquarters, or if you otherwise fail to abide by the postal regulations and this Agreement regarding care and use of the Meter, then this Agreement and any related Meter rental may be revoked. You acknowledge that any use of this Meter that fraudulently deprives the USPS of revenue can cause you to be subject to civil and criminal penalties applicable to fraud and/or false claims against the United States. The submission of a false or fraudulent statement can result in imprisonment of up to 5 years and fines of up to \$10,000 (18 U.S.C. 1001) and a civil penalty of up to \$5,000 plus an assessment of twice the amount falsely claimed (3 U.S.C. 3802). The mailing of matter bearing a fraudulent postage meter imprint is an example of a violation of these statutes.

- (i) You are responsible for immediately reporting (within 72 hours or less) the theft or loss of the Meter to Us. Failure to comply with this notification provision in a timely manner may result in the denial of refund of any funds remaining on the Meter at the time of loss or theft.
- (j) You understand that the rules and regulations regarding the use of this Meter as documented in the Domestic Mail Manual may be updated from time to time by the USPS and it is your obligation to comply with any rules and regulations regarding its use.

R2.5 Rate Updates and Soft-Guard® Program.

- (a) Your Meter or Equipment may require periodic rate information updates that you can obtain under our Soft-Guard program, or you will receive individual rate updates as a separate charge.
- (b) If you have purchased a Soft-Guard Subscription, we will provide up to 6 rate updates during each 12 month period following the date of installation of the Equipment.
- (c) We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code™ or zone change.
- (d) Your Soft-Guard Subscription does not cover any change in rates due to custom rate changes, new classes of carrier service, or a change in ZIP Code or zone due to Equipment relocation.
- (e) If your Soft-Guard Subscription has expired, or if you have received the maximum number of rate updates under your Soft-Guard Subscription, you will be billed for any additional rate update you request.

UNITED STATES POSTAL SERVICE ACKNOWLEDGMENT OF DEPOSIT

UI.1 In connection with your use of a Postage Evidencing System as defined in the Code of Federal Regulations ("CFR"), you may transfer funds to the USPS through a lockbox bank (the "Lockbox Bank") for the purpose of prepayment of postage on Postage Evidencing Systems, generating evidence of postage, both PC Postage and meters (a "Deposit"), or you may transfer funds to the Bank for deposit into a Postage By Phone® Reserve Account ("your Reserve Account") which you maintain at the Bank.

UI.2 To the extent you deposit funds in advance of the use of any evidence of postage, you may, from time to time, make Deposits in the Lockbox Bank account identified as "United States Postal Service CMRS-PB" or make deposits in your Reserve Account, in either case through electronic means, including Automated Clearinghouse Transfers. The USPS may, at its discretion, designate itself or a successor as recipient of Deposits made by you to the Lockbox Bank account described above.

UI.3 Any deposit made by you in your Reserve Account is subject to the Postage By Phone® Reserve Account – Agreement and Disclosure Statement governing your Reserve Account.

UI.4 Any Deposit made by you in the Lockbox Bank account shall be credited by the USPS only for the payment of evidence of postage. Such Deposits may be commingled with Deposits of other customers. You shall not receive or be entitled to any interest or other income earned on such Deposits.

- (f) You can also renew the Soft-Guard Subscription by contacting PBI online or by telephone at the address and numbers set forth in the "How to Contact Us" section of the General Terms.

R2.6 Warranty.

- (a) The warranty for the Equipment and services is set forth in the "Warranty" section of the General Terms.

R2.7 Limitation of Liability.

- (a) PBI's limitation of liability is set forth in the "Limitation of Liability" section of the General Terms.

R2.8 Collection of Information.

- (a) You authorize us to access and download information from your Meter. We may disclose this information to the USPS or other authorized governmental entity.
- (b) We will not share with any third parties (except the USPS or other governmental entity) individually identifiable information that we obtain about you in this manner unless required to by law or court order.
- (c) We may elect to share aggregate data about our customers' postage usage with third parties.

R2.9 IntelliLink® Control Center/Meter Care and Risk of Loss.

- (a) You agree to take proper care of the IntelliLink Control Center and/or Meter(s) as stated in this Agreement and any user documentation.
- (b) You assume all risk of loss or damage to the IntelliLink Control Center and/or Meter(s) while you have possession.

R3. VALUE BASED SERVICES

Value Based Services include services such as USPS® e-Return Receipt and USPS® Confirmation Services.

R3.1 Fees.

- (a) Any fees charged by the USPS for any Value Based Service you purchase are payable by you in the same way that you pay for postage.
- (b) The USPS is solely responsible for its services.
- (c) We are not responsible for any malfunctions of any part of the communication link connecting the IntelliLink Control Center with the USPS data system.

R3.2 Ending the Value Based Services. We have the right to

terminate the Value Based Services if the USPS discontinues offering the service or you breach your obligations under this Agreement and fail to cure the breach within thirty (30) days after you have been notified of it in writing.

UI.5 The USPS will provide a refund to you for the remaining account balances of Deposits held by the USPS. These refunds are provided in accordance with the rules and regulations governing deposit of funds for evidence of postage, published in the CFR.

UI.6 The Lockbox Bank, which shall collect funds on behalf of the USPS, shall provide PBI, on each business day, information as to the amount of each Deposit made to the USPS by you, so that PBI can update its records.

UI.7 PBI may deposit funds on your behalf. The USPS will make no advances of funds to you. Any relationship concerning advances of funds is between you and PBI, PBGFS and/or the Bank.

UI.8 You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice.

UI.9 Postal Regulations governing the deposit of funds are published in the CFR or its successor. You acknowledge that you shall be subject to all applicable rules, regulations, and orders of the USPS, including future changes to such rules, regulations, and orders, and such additional terms and conditions as may be determined in accordance with applicable law. The USPS rules, regulations, and orders shall prevail in the event of any conflict with any other terms and conditions applicable to any Deposit.

PURCHASE POWER® TERMS AND CONDITIONS

The following provisions apply when you first enroll in the Purchase Power Program (the "Program"). Additionally, you will receive from us a set of more specific provisions within twenty (20) days of the date of this Agreement that will be more specifically tailored to your Purchase Power Account (the "Account") and will apply to your ongoing participation in the Program.

P1.1 General. (a) In order to participate in the Program, you must provide the information described in Section P1.8. (b) If you subscribe to the EasyPermitPostage® service, you may use the Purchase Power credit line to pay for permit postage and associated USPS fees.

(c) The Purchase Power credit line is a product of The Pitney Bowes Bank, Inc. (the "Bank") and is not available to individuals for personal, family, or household purposes.

P1.2 Account Charges. (a) Your Purchase Power Account (the "Account") will be charged for the amount of postage, products, and services requested and the related fees, if applicable. (b) Unless prohibited by law, you agree to pay the fees and charges of which the Bank has given you notice, including, without limitation, the fees and charges relating to: (i) transaction fees, if applicable; (ii) your failure to pay in a timely manner; (iii) your exceeding your credit line; and (iv) fees attributable to the return of any checks that you give to the Bank as payment of the Account.

P1.3 Billing, Payments, and Collection. (a) You will receive a billing statement for each billing cycle in which you have activity on the Account. The Bank reserves the right to deliver any statement electronically to the email address that is then on file for the Company. (b) Payments are due by the due date shown on your billing statement. (c) You may pay the entire balance due or a portion of the balance, provided that you pay at least the minimum payment shown on the statement. In the event of a partial payment, you will be responsible for the unpaid balance.

P1.4 Deferred Payment Terms. (a) By using the Program, you agree that whenever there is an unpaid balance outstanding on the Account which is not paid in full by the due date shown on your billing statement, the Bank will charge you, and you will pay, interest on the unpaid balance of the Account from time to time, for each day from the date the transaction is posted to the Account until the date the unpaid balance is paid in full, at a variable rate equal to the Annual Percentage Rate applicable to the Account from time to time. (b) (i) The Annual Percentage Rate applicable to the Account will be: the greater of (a) 22% and (b) the sum of the highest "Prime Rate" published in the "Money Rates" section of *The Wall Street Journal* on the last business day of the month and the margin set forth below (the sum of the margin and the Prime Rate is herein called the "Floating Rate"). (ii) The Annual Percentage Rate will be adjusted on a monthly basis based on any fluctuation in the Floating Rate, if applicable.

(iii) Any change in the Annual Percentage Rate based on the calculation described in this section will become effective on the first

day of your next billing cycle. (iv) The margin which will be added to the Prime Rate to determine the Floating Rate will be 14.75% (using the Prime Rate in effect as of March 31, 2010, the daily periodic rate would be .049315% and the corresponding annual percentage rate would be 18.00%). (v) The Account balance that is subject to a finance charge each day will include (a) outstanding balances, minus any payments and credits received by the Bank on the Account that day, and (b) unpaid interest, fees, and other charges on the Account. (vi) The Bank will charge a minimum finance charge of \$1.00 in any billing cycle if the finance charge as calculated above is less than \$1.00. (vii) Each payment that you make will be applied to reduce the outstanding balance of the Account and replenish your available credit line. (viii) The Bank may refuse to extend further credit if the amount of a requested charge plus your existing balance exceeds your credit.

P1.5 Account Cancellation and Suspension. (a) The Bank may at any time close or suspend the Account, and may refuse to allow further charges to the Account. (b) Cancellation or suspension will not affect your obligation to pay any amounts you owe.

P1.6 Amendments: Electronic Delivery, Termination. (a) The Bank can amend any of the provisions and terms related to the Program at any time by written notice to you or by electronic notice via the email address that is then on file for the Company. You are consenting to electronic delivery of any amendments to the Program terms. (b) Each time you use the Program, you are signifying your acceptance of the terms and provisions then in effect. (c) An amendment becomes effective on the date stated in the notice and will apply to any outstanding balance on the Account. (d) The Bank may terminate the Program at any time and will notify you in the event of any termination. (e) Any outstanding obligation will survive termination of the Program.

P1.7 Governing Law. The Program and any advances are governed by and construed in accordance with the laws of the State of Utah and applicable federal law.

P1.8 USA PATRIOT Act. (a) Federal law requires financial institutions to obtain, verify and record information that identifies each person who opens an account. (b) The Bank asks that you provide identifying information, including your address and taxpayer identification number. (c) The Bank may also ask for additional identifying information, where appropriate, including asking that your representative who is opening the Account provide his/her name, address, date of birth, driver's license and/or other documents and information that will allow the Bank to identify him/her.

PRESORTXTRA™ PROGRAM TERMS AND CONDITIONS

The following provisions apply when you enroll in the Pitney Bowes PresortXtra Program and apply only to the services provided under the PresortXtra Program.

X1. PBI'S RESPONSIBILITIES

Depending on the service(s) you have selected on your PresortXtra Program Requirements and Enrollment Form, we will pick up your metered First-Class™ letters ("Letters"), First-Class flats ("Flats"), or both ("Program Mail"), provided to us and prepared by you in accordance with additional terms and conditions provided to you when you enroll in the PresortXtra Program ("Program Requirements and Enrollment Form"). We will pick up your Letters and/or Flats at your designated location(s) and in accordance with the schedule we may mutually agree upon from time to time. We will sort the Program Mail at one of our mail processing facilities. We will perform this service under this Agreement in accordance with accepted mail processing industry standards. EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED.

X2. CUSTOMER'S RESPONSIBILITIES

X2.1 Letters. You will prepare your qualifying Letters as described in the Program Requirements and Enrollment Form. You will be

responsible to meter the Letters at the then current presort discount rate established by the United States Postal Service (the "USPS").

X2.2 Flats. You will prepare your qualifying Flats as described in the Program Requirements and Enrollment Form. You are responsible for metering such Flats at the then current USPS 3 digit First-Class flat rate. You agree that we will invoice you through your Purchase Power credit line for any fees at the rate set forth in the Program Requirements and Enrollment Form.

X2.3 General. You will have your Program Mail ready for pickup at your designated locations and in accordance with the schedule we mutually agree upon from time to time. You agree that time is of the essence with respect to each of your obligations for which time is a factor. You will ensure that your Program Mail complies with all applicable laws, rules and regulations, including but not limited to, all USPS regulations, and you will promptly execute any and all documents required by the USPS. You will ensure that your mail comp

lies with the requirements set forth in the Program Requirements and Enrollment Form.

X3. GENERAL TERMS

X3.1 Indemnification. In the event that we are subjected to any loss, expense, damage or liability due to your acts or omissions, including but not limited to any claims by any third parties, or fines or assessments imposed by the USPS or other governmental entities, you will indemnify and hold us harmless from such loss, expense, damage or liability, including our reasonable attorney's fees.

X3.2 Termination. We may discontinue providing the PresortXtra Program service upon one (1) business day's notice in the event you breach any of your obligations hereunder, including, but not limited to, those set forth in the Program Requirements and Enrollment Form, and fail to cure such breach within ten (10) business days of written notice from us advising you of the nature of such breach. Either party may terminate with or without cause upon thirty (30) days' prior written notice, provided that you remain responsible for paying any outstanding invoice(s) after such discontinuation.

X3.3 Modification; Amendment. If the USPS adopts any new postal regulations, procedures, rates or incentives, we may modify or terminate the PresortXtra program upon fifteen (15) days prior written notice to you.

X3.4 Right to Subcontract. We may subcontract certain of our rights and/or responsibilities hereunder to third parties without your prior consent.