



Issue: Vermont Systems Hosting and Card Processing

Date: January 4, 2022

Submitted By: Matt Crouse, Director of Parks and Recreation

Background

Vermont Systems is the company that provides the registration software (Rec Trac) that the parks department uses for all programs, facility rentals, POS sales, memberships, etc. Currently, this program is an internet-based program hosted on the city server. We also utilize a third-party vendor ETS for all credit card processing which has and does cause issues in communication from time to time.

Analysis

This program requires continued updates to ensure the most up to date securities for card processing and data protection. This process takes several minutes several times per year (nearly monthly) to update. By allowing Vermont Systems to host the program the updates will be done automatically, after hours, and without interruption to our operations. Vermont Systems is now also offering a card processing payment service that will allow the city to utilize this single source for all credit card transactions. This will allow staff to utilize a single vendor for everything related to the Rec Trac program. Currently, when credit card processing issues arise staff must work through/with two separate vendors to help determine what end of the process the error occurred and how to remedy. By having the Vermont Systems card processing we will have the ability to work with a single vendor to rectify any issues.

Recommendation

This resolution is to allow the city administrator to sign the agreements for both Rec Trac hosting, and Vermont Systems card processing. The funds are in the 2022 budget for both projects. Once approved staff will begin working to make the necessary changes to this software and will begin working to end our services with ETS for card processing.

Thank you for your consideration and I would be happy to answer any questions you may have.

Respectfully,

Matt Crouse
Director, Parks and Recreation

RESOLUTION NO. 2022-013

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**
2 **ADMINISTRATOR TO EXECUTE CERTAIN CONTRACT DOCUMENTS WITH**
3 **VERMONT SYSTEMS FOR REC TRAC HOSTING AND CARD PROCESSING**
4 **SERVICES.**

5 _____
6
7 **WHEREAS** the City’s Parks and Recreation Department currently utilizes Rec Trac
8 for certain programs; and

9
10 **WHEREAS** the City Council desires to the execution of the documents attached
11 hereto as “Resolution Exhibit A,” to allow Vermont Systems to host the City’s Rec Trac
12 program and to utilize their card processing services.

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14 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**
15 **NIXA, AS FOLLOWS, THAT:**

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17 **SECTION 1:** The City Administrator, or designee, is hereby authorized to enter
18 into a contract with Vermont Systems. Said Contract shall be in substantially similar form
19 as the documents attached hereto as “Resolution Exhibit A,” which are attached hereto
20 and incorporated herein by this reference. The City Administrator and the officers of the
21 City are hereby authorized to do all things necessary or convenient to carry out the terms
22 and intent of this Resolution.

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24 **SECTION 2:** This Resolution shall be in full force and effect from and after its final
25 passage by the City Council and after its approval by the Mayor, subject to the provisions
26 of section 3.11(g) of the City Charter.

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29 **[Remainder of page intentionally left blank. Signatures follow on next page.]**
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RESOLUTION NO. 2022-013

47 **ADOPTED BY THE CITY COUNCIL THIS 10th DAY OF JANUARY 2022.**

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50 ATTEST:

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53 _____
CITY CLERK

_____ PRESIDING OFFICER

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56 **APPROVED BY THE MAYOR.**

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59 ATTEST:

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62 _____
CITY CLERK

_____ MAYOR

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65 APPROVED AS TO FORM:

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68 _____
CITY ATTORNEY

_____ DATE OF APPROVAL



SCHEDULE A – PAYMENT SERVICE RATES & FEES*

TRANSACTION PARTIES		FUNDING**
Customer / Sub-Merchant:	City of Nixa (MO)	Funds received by 7:00pm ET will be deposited in Customer’s designated account within three (3) business days
Payment Facilitator:	RecTrac, LLC d/b/a Vermont Systems	
Payment Processor:	WorldPay, LLC	
Sponsor Bank:	Fifth Third Bank	
<p><small>* Customer acknowledges and accepts that VS will collect its fees and charges for Payment Service directly from the EFT/ACH draft associated with the business location.</small></p> <p><small>** VS is not responsible for funding delays due to weekends, federal holidays or Force Majeure events or incidents.</small></p> <p><small>*** Daily settlement cut-off times are 7:30pm ET for E-commerce and 9:00pm ET for Card Present MIDS.</small></p>		

FLAT RATE

CREDIT CARD PROCESSING FEES			
Mastercard Visa Discover	Per electronic authorization	\$	0.20
	Per electronic authorization reversal (void)	\$	0.20
	Per sale transaction	\$	0.20
	Per refund transaction	\$	0.20
	Per credit card decline	\$	0.20
	Credit card account updater fee <small>If & when available and option selected/elected</small>	\$	1.00
	Per chargeback request or return processed	\$	25.00
	Mastercard-Visa-Discover acquired gross purchase sale %		2.45
American Express	Per AMEX sale transaction (AMEX Direct)	\$	0.20
	Per AMEX refund transaction (AMEX Direct)	\$	0.20
	Credit card account updater fee <small>If & when available and option selected/elected</small>	\$	1.00
	Per chargeback request or return processed	\$	25.00
	Per AMEX acquired settled transaction (Opt Blue)*	\$	0.20

	AMEX acquired gross purchase sale % (Opt Blue)		2.45	%
* VS shall be permitted to switch its primary merchant account to Opt Blue without Sub-Merchant approval or pre-authorization.				
ACH PROCESSING FEES (if and when available & option selected/elected)				
ACH / e-Check Processing	ACH fee per sale transaction	\$	1.00	
	ACH fee per refund transaction	\$	1.00	
	ACH return fee per item	\$	1.50	
	ACH account updater fee	\$	0.50	
	ACH notification of change	\$	1.50	
	ACH auto redeposit	\$	0.50	
INSTANCE-BASED FEES				
Funding Fees	Per fiscal day overdraft fee	\$	110.00	
	Per wired funds transfer	\$	15.00	
	Per ACH credit / debit per funds transfer	\$	0.10	
OTHER FEES				
	PCI Non-compliance Fee (Monthly rate) per MID, to be assessed if the Customer is found to be PCI non-compliant, not to exceed \$75.00 total.	\$	25.00	
NOTES				

Customer

INITIALS: _____

SUB-MERCHANT APPLICATION AND AGREEMENT (SMAA)

SECTION 1: SUB-MERCHANT INFORMATION					
Business / Sub-Merchant (provide legal entity name)			Doing Business As (if applicable)		
City of Nixa Parks and Recreation			City of Nixa Parks and Recreation		
Date of Formation	Approx. Years in Business	Business Address			
		P.O. Box 395 Nixa, Missouri 65714			
Tax ID (FEIN)	Website (URL)	Business Phone			
44-6005734	www.nixaparks.com	417.725.5486			
Primary Contact Name (for general communications)		Primary Contact Phone		Primary Contact Email	
Matt Crouse		417.725.5486		mccrouse@nixa.com	
Business Type <small>(Select One)</small>	PUBLIC <input checked="" type="checkbox"/>	INDIVIDUAL <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Individual	CORPORATION <input type="checkbox"/> S-Corp. <input type="checkbox"/> C-Corp. <input type="checkbox"/> LLC	PARTNERSHIP <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership	OTHER <input type="checkbox"/> Non-Profit (501C) <input checked="" type="checkbox"/> Government <input type="checkbox"/> Other:
Has this business processed credit cards before?	Has this business ever been terminated from accepting credit cards from any network?		Will this business be running a presale prior to opening?		What payment methods will the business accept?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA		<input checked="" type="checkbox"/> Debit <input checked="" type="checkbox"/> Credit <input checked="" type="checkbox"/> ACH
Briefly describe the nature of the services provided by this business?			What types of payment would this business like to accept?		
			<input checked="" type="checkbox"/> In-Person <input checked="" type="checkbox"/> Online <input checked="" type="checkbox"/> Telephone <input type="checkbox"/> Mail-In <input checked="" type="checkbox"/> Recurring Billing		
SECTION 2: TRANSACTION INFORMATION <small>(all financial assumptions approximated in USD)</small>					
Annual Card Volume (\$)	Avg Ticket (Card) (\$)	Max Ticket (Card) (\$)	Annual ACH Volume (\$)	Avg Ticket (ACH) (\$)	Max. Ticket (ACH) (\$)
\$750,000.00	\$47.00	\$5,000.00	\$216,000.00	\$47.00	\$5,000.00
Total Annual Sales – All Transactions (\$)					
\$1,000,000.00					
SECTION 3: LOCATION INFORMATION <small>(use additional pages if necessary)</small>					
	Location/Business Name	Business Address	Same as Sec 1 address	Business Phone	
1	Nixa Community and Aquatic Center	701 N. Taylor Way, Nixa, Missouri, 65714	<input type="checkbox"/>	417.725.5486	
2			<input type="checkbox"/>		
3			<input type="checkbox"/>		
4			<input type="checkbox"/>		
5			<input type="checkbox"/>		
6			<input type="checkbox"/>		
SECTION 4: MERCHANT ID INFORMATION <small>(use additional pages if necessary)</small>					
	Merchant ID Account Name (will appear on statement)	Associated Location or Address			Annual Card Revenue
1	City of Nixa- Parks and Recreation	Location #: 1			\$750,000.00
2		Location #:			
3		Location #:			
4		Location #:			
5		Location #:			
6		Location #:			

SECTION 5: OWNER INFORMATION

Why Do We Need This Information? We require certain information about your ownership for compliance with federal Know-Your-Customer (or "KYC") regulations promulgated by the Financial Crimes Enforcement Network Bureau of the U.S. Department of Treasury. KYC regulations seek to prevent financial crimes and the funding of terrorism, among other things. The information sought below is required by KYC regulations. Information about Beneficial Owners must be provided for any person or entity with a 25% or more ownership interest in the Sub-Merchant unless the Sub-Merchant is a Government Entity. Beneficial Owners may be natural persons (with Social Security Numbers) or they may be another legal entity (with a federal tax ID number). In addition to Beneficial Owner information, **at least one (1) "Control Owner" must be provided.** A Control Owner is not required to have an ownership interest in the Sub-Merchant (although they often do), and the Control Owner must be a natural person with significant responsibility to control, manage or direct the activities of the Sub-Merchant's business. Control Owners often have the title of CEO, CFO, COO, Managing Member, General Partner, President or Treasurer.

CONTROL OWNER (must be a natural person; SSN and Driver's License information not required for government entity; * denotes required fields for all applicants)

Full Legal Name *		Social Security Number	Date of Birth *
Address (Home or Business) *		Title	
Driver's License State	Driver's License Number	Phone (Home or Business) *	Email *

BENEFICIAL OWNER(S) (may be a natural person or legal entity; SSN and/or FEIN required; Beneficial Owner(s) information not required for government entity)

BENEFICIAL OWNER 1

Full Legal Name (Owner 1)		SSN or FEIN	Date of Birth / Date of Incorporation	
Address (Home or Business)		Email		
Driver's License State	Driver's License Number	Phone	Ownership Interest	%

BENEFICIAL OWNER 2

Full Legal Name (Owner 2)		SSN or FEIN	Date of Birth / Date of Incorporation	
Address (Home or Business)		Email		
Driver's License State	Driver's License Number	Phone	Ownership Interest	%

SECTION 6: BANKING INFORMATION (copy of a voided check or a bank letter with full account details listed will be required)

Bank Name	Account Name	Routing Number	Account Number
Southern Bank	City of Nixa	281573259	590024949

ACKNOWLEDGEMENT: By signing below, Sub-Merchant expressly acknowledges that: (1) the individual signing this Sub-Merchant Agreement has the proper legal authority to bind the Sub-Merchant; (2) the Sub-Merchant's Application for payment services may be rejected in underwriting but, once accepted, will constitute a legally binding Sub-Merchant Agreement with the Payment Facilitator identified below; (3) all information provided herein is true and accurate to the best of Sub-Merchant's knowledge; (4) the Payment Service Terms and Conditions, and any other documents referenced as being part of the agreement, shall become part of this Sub-Merchant Agreement; (5) the Payment Facilitator's provision of payment services under the Sub-Merchant Agreement shall be expressly conditioned on Sub-Merchant's payment of all fees and other charges, and its compliance with VS's Terms of Service and Privacy Policy, as may be revised from time to time; and (6) the authority granted herein shall be in the nature of a Power of Attorney, which shall be deemed created, is irrevocable and coupled with an interest.

AUTHORIZATION: Sub-Merchant expressly authorizes the Payment Facilitator identified below to take the following actions: (1) to establish a primary merchant account with a payment processor of the Payment Facilitator's choosing; (2) to access Customer Data, including but not limited to Cardholder Data, for the purposes of providing the payment services contemplated by the Agreement; (3) to execute documents on Sub-Merchant's behalf, or to take any other action which the Payment Facilitator deems reasonably necessary to provide its payment services to Sub-Merchant as described herein; (4) to access Sub-Merchant's designated account(s) for purposes of received and accepting payments on settled transactions, together with any adjustments made on Sub-Merchant's behalf; (5) to collect any Fees or other charges owed to Payment Facilitator, or any of Payment Facilitator's affiliates or subsidiaries, directly from the Sub-Merchant's EFT/ACH draft; (6) to set up a reserve account where Payment Facilitator considers it reasonably necessary to protect its legitimate business interests; (7) to withhold the remittance of any funds in accordance with lawful orders, garnishments and/or tax levies; (8) to recoup, retrieve or collect from any source of available funds, including but not limited to the Sub-Merchant's EFT/ACH draft, any Payment Facilitator expenditures related to Sub-Merchant's eCheck returns, chargebacks, negative accruals or overdrawn accounts; and (9) to transfer billed amounts to an account held by Payment Facilitator to facilitate the settling of transactions run at the Sub-Merchant's place or places of business.

SUBMITTED AND AGREED TO BY: Sub-Merchant		ACCEPTED BY: Payment Facilitator	
X		X	
Name	Date	Name	Date

PAYMENT SERVICES ADDENDUM

This Payment Services Addendum (“Addendum”) between RecTrac, LLC d/b/a Vermont Systems (“VS”) and City of Nixa (MO) (“Customer”) is intended to revise the Services Agreement, inclusive of all relevant attachments, schedules, exhibits and/or Addenda (collectively, “Agreement”) previously or simultaneously executed between the Parties by adding to the Agreement the terms and conditions listed below.

- 1 TERM.** The term of this Addendum will commence on the date executed by the Customer and will run coterminus with the Agreement.
- 2 PAYMENT SERVICES.** Customer is adding VS Payment Services to the suite of products and services it is receiving from VS (as reflected in the Order Schedule) at the rates described in the attached Schedule A. VS will provide Customer with Payment Services pursuant to a separately executed Sub-Merchant Agreement, inclusive of Customer’s Sub-Merchant Application and Agreement (“SMAA”) and VS’s Payment Service Terms & Conditions, each of which shall be incorporated by reference into the Agreement.
- 3 SOFTWARE UPDATES.** To maintain the highest level of security for payment processing, the Customer agrees to operate on the most recent release of the software within 30 days of its general release. Extended delays to update the software may impact the ability to safely process transactions and VS reserves the right to disable processing until the software is updated.
- 4 MISCELLANEOUS.** Except as expressly revised in this Addendum, the Agreement will remain in full force and effect. If there is any conflict of inconsistencies between this Addendum and the Agreement, this Addendum will control. VS’s acceptance may be evidenced by its fulfillment of the Agreement which this Addendum revises.

AGREED TO AND ACCEPTED BY:

City of Nixa (MO)

Print Name:

Title:

Date

PAYMENT SERVICE TERMS AND CONDITIONS

1. INTRODUCTION. These Payment Service Terms and Conditions govern the terms and conditions under which we RecTrac LLC, DBA Vermont Systems, have agreed to provide you, as the Sub-Merchant (“you,” “your,” or “Sub-Merchant”), with certain payment-related services as further defined below. These Payment Service Terms and Conditions are part of the Sub-Merchant Application and Agreement (collectively, the “Sub-Merchant Agreement”) that will be binding on you and the Payment Facilitator described therein. As a condition precedent to VS’s obligations to perform under this Agreement, you shall be required to successfully pass underwriting with our payment processor, Worldpay, LLC. If you do not successfully pass underwriting with our payment processor, then we shall have no obligation to perform under the Agreement and shall be released of any and all obligations or liabilities related to or arising under the Agreement. Terms not specifically defined in the Sub-Merchant Agreement will have the same meanings as set forth in Section 1 of the Terms of Service. Except as otherwise described in this section, no modification of this Payment Service Agreement, including, but not limited to, subsequent terms included within your Purchase Orders, will be binding unless in writing and manually signed by an authorized representative of the parties.

2. PAYMENT SERVICES; FEES. The Payment Services we have agreed to provide to you, together with the fees you have agreed to pay for such services, shall be as described in the Services Agreement or Order Schedule.

3. SCOPE; EXCLUSIVITY. In exchange for payment of all Fees and other charges associated with Payment Services, you will receive the right to accept payments from your customers, clients and/or members (“End Users”) via bankcards (“Cards”) validly issued by Visa, Mastercard,

Discover and American Express (“Card Brands”), and also, if approved, via automated clearing house transactions (“ACH”). Payment Services will only be provided on transactions properly run through the VS platform in accordance with the Agreement. Payment Services must only be used for business-related purposes, and shall not be used for personal, family or household use. You grant us exclusive rights to provide you with the Payment Services identified in the Services Agreement for the duration of the Term.

4. TERM; EARLY TERMINATION FEE. The term of the Sub-Merchant Agreement will run concurrently with the term described in your Services Agreement. If you terminate the Sub-Merchant Agreement prior to the expiration of a fixed term (whether during the initial term or any renewal term, as applicable), we reserve the right to charge you an early terminate fee equal to our average fees related to Payment Services over a trailing six-month period, multiplied by any remaining months in the Term. Any partial months will be prorated. If a term is not defined, then your Sub-Merchant Agreement will automatically renew on a month-to-month basis, and you shall have a right to cancel at any time, penalty-free, with a 60-day advance written notice.

5. ELECTRONIC FUNDS TRANSFER AGREEMENT. You authorize us to initiate, process, transmit, and settle ACH debits or credits to the account or accounts which you have specified (collectively, “Designated Account(s)”). Your authorization will remain in effect, even after termination of the Sub-Merchant Agreement, until we, in our sole discretion, decide that all of your financial obligations have been fully satisfied. You irrevocably authorize us to debit the Designated Account(s) for the amount of any chargebacks, ACH returns, fines, losses and costs that we may incur because of your use of the Payment Services. You

may change the Designated Account(s) no more than once every 180 days. Please notify us immediately of any changes.

6. REQUIRED INFORMATION. In order to use the Payment Services, you are required to provide us with certain information relating to your identity, End Users, transactions, and financial statements. You must provide us with accurate and complete information and keep the information up-to-date. We rely on this information for underwriting and to meet our obligations under applicable laws and agreements with our payment processor and sponsor bank. If the scope or nature of your business changes, you must notify us immediately. Your failure to do so will be considered a material breach of the Sub-Merchant Agreement.

7. VERIFICATION. You expressly authorize us to make any business and/or personal credit inquiries (including, but not limited to, credit reports for your directors, officers, and principals), identity-verification inquiries, transaction-verification inquiries (including, but not limited to, inquiries with End Users), and any other inquiries considered necessary relating to our provision of Payment Services. You understand that by agreeing to these Terms and Conditions you are providing 'written instructions' to Vermont Systems under the Fair Credit Reporting Act authorizing Vermont Systems to obtain information from your personal credit profile or other information from Experian. You authorize Vermont Systems to obtain such information solely to perform risk assessment and identity verification.

8. TAXES. It is your responsibility to determine what, if any, taxes apply to the sale of your products and services, or the payments you receive in connection with your use of our Payment Services (collectively, "Taxes"). It is solely your responsibility to assess, collect, report, or remit the correct tax to the proper tax authority. We are not obligated to, nor will we determine whether Taxes apply, or calculate, collect, report, or remit any Taxes to any tax authority arising from any transaction. You acknowledge that we will satisfy

all IRS reporting requirements as required by law, including providing the IRS with an information return on your Card transactions and third-party network transactions.

9. PROCESSING LIMITS. You acknowledge that we may, in our sole discretion as we may reasonably determine, assign a maximum dollar amount per sales ticket and an aggregate maximum dollar amount of Card and ACH transactions per calendar month. If certain Card processing volume thresholds are exceeded by your use of Payment Services, you may be required to enter into an additional agreement with our payment processor and/or sponsor bank.

10. END USER BILLING AUTHORIZATION. Per the Agreement, we are not liable for the contents of your End User Agreements. However, if we are providing you with Payment Services, you will be required to include a payment authorization provision acceptable to us in your End User Agreements. Failure to include an acceptable payment authorization provision in your End User Agreements could result in Payment Services being delayed or terminated. You agree to hold us harmless for any liability arising under or in connection with your End User Agreements, including but not limited to the payment authorization provision.

11. COMPLIANCE WITH LAWS, RULES AND POLICIES. You must comply with the applicable Card Brand rules and operating regulations and the National Automated Clearing House Association rules ("NACHA") (collectively, "Rules"). An abridged version of the Visa, MasterCard, American Express and Discover Rules may be viewed [here](#), [here](#), [here](#) and [here](#). Copies of the NACHA Operating Rules and Guidelines are available for review [here](#). We are a Payment Card Industry ("PCI") level 1 service provider and are qualified to handle Cardholder Data (e.g., information associated with a Card, such as account number, expiration date, and CVV2) in

connection with the Payment Services. We will comply with the Payment Card Industry Data Security Standards ("PCI DSS") to the extent we possess or otherwise store, process, or transmit Cardholder Data on your behalf. If you possess or otherwise store, process, or transmit Cardholder Data, then you must also comply with PCI DSS. You agree to comply with any applicable federal, state and local laws, rules, and regulations (collectively, "Laws"). You further agree to abide by our Term of Service and Privacy Policy (collectively, "Policies"), both of which are expressly incorporated into the Agreement. You will assist us if we are required to ascertain your compliance with any Rules, Laws, PCI DSS, or Policies. We may, within our sole discretion, suspend Payment Services for a reasonable period of time as needed to investigate suspicious or unusual activity, and we shall have no liability for any losses you may attribute to any suspension of remits or funds disbursement. We may reverse Card transactions that we deem to be in violation of the Agreement, including, without limitation, the Sub-Merchant Agreement, and you agree to reimburse us for any such reversal.

12. RECONCILIATIONS; ERRORS. You are responsible for reconciling your transaction history or remit reports with your actual transactions and you agree to notify us of any errors or discrepancies (each an "Error") arising from such reconciliation and verification. We will investigate reported Errors and attempt to promptly rectify them. In the event you are owed money as a result of an Error, we will transfer funds to your Designated Account at the next scheduled remit or pay-out cycle. While we may still work with you in our sole discretion to reconcile Errors, your failure to notify us of such Errors within 60 days of when it first appears on your transaction history or remit report will be deemed a waiver of any right to amounts that may be owed to you in connection with such Errors, including any related charges.

13. PROHIBITED PRACTICES. In addition to the Prohibited Uses of our Services, as described in the Agreement, where you receive Payment Services from us: (a) you will not present for processing or

credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and the End User, or any transaction you know or should know to be fraudulent or not authorized by the End User; (b) you must not honor any Card that is expired or listed on a current Electronic Warning Bulletin file, regardless of whether authorization has been obtained; (c) you must not request an ACH transfer that violates the Rules or Laws; (d) you will not use the Payment Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of an End User; and (e) you may not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to, a third party.

14. SALES TRANSMITTALS. You agree to retain a copy of the sales transmittal for completed transactions for 25 months, or for such longer period as the Rules may require. Within three business days of our request, you will produce copies of sales transmittals and other transaction evidence.

15. RECURRING TRANSACTIONS. You agree to obtain the End User's prior written consent for recurring transactions, including a description of the product and the frequency and duration of the recurring charge, and notify the End User that he or she may cancel recurring billing charges at any time.

16. ACH PROCESSING. To enable you to make and accept ACH payments, you authorize us to originate credit or debit records for the purpose of a funds transfer ("Entries") into the ACH network. We will use reasonable efforts to originate Entries on your behalf in accordance with the Sub-Merchant Agreement. You must only submit Entries for bona fide transactions with your End Users made in the ordinary course of business in accordance with the Agreement, Rules and Laws. You shall obtain and maintain appropriate authorizations in accordance with the Rules from each End User for each ACH transaction. All

disputes between you and any of your End Users relating to any ACH transaction must be resolved between you and them. If we receive any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. We bear no financial responsibility for any disputed transaction. If we respond to a dispute or transaction inquiry on your behalf, you consent to pay our additional fees associated with these services.

17. AMERICAN EXPRESS. The following section applies only if you accept American Express Cards. You must maintain customer service information that is readily available for review by American Express cardholders transacting with you. The customer service information should provide clear instructions on how to contact you, including an active customer service email address and telephone number. You understand and covenant that you are not a third-party beneficiary under our agreement with American Express, including all schedules and exhibits, or the American Express Rules. You acknowledge and agree that American Express is a third-party beneficiary under the Sub-Merchant Agreement between you and us. This means American Express has the right, but not the obligation, to enforce the terms of the Sub-Merchant Agreement against you. You authorize us to submit American Express Card transactions to, and receive payment from, American Express on your behalf. You authorize us to disclose Card transaction data and data about you to American Express, its affiliates, agents, subcontractors, and employees, and further authorize these entities to use such information to perform services, operate and promote the American Express network, perform analytics and create reports, and for any other lawful business purpose, including as described in the American Express Rules.

18. COST REVIEW & POTENTIAL ADJUSTMENT. We will conduct a quarterly review of the overall card processing costs. The first review will begin 6 months after initial set up. If there is a material increase in card processing costs, there is potential for a maximum increase of 10 basis points per

quarter and 40 basis points during the first three years.

19. LARGE PROCESSING VOLUME. In the event that more than \$1,000,000 in Visa transactions and/or \$1,000,000 in MasterCard transactions (or such other amount provided by the Operating Regulations) (“Benchmark Amount”) is processed through or on your behalf in any 12-month period, you will be required to execute a “Merchant Services Agreement for Sub-Merchants” with our Acquirer the terms of which will be independently enforceable by Acquirer.

20. CHARGEBACKS; RETURNS; FINES. We shall have no liability whatsoever for your chargebacks, ACH returns, fines, losses and costs we may incur because of your use of the Payment Services. You agree to indemnify us for any and all losses or damages that we suffer, inclusive of attorneys’ fees and court costs, as a result of any chargebacks, ACH returns, fines, losses and costs associated with your park, center, facilities or business, or the Payment Services. The indemnity rights described herein shall be in addition to, and not in lieu of, any other indemnity rights we have under the Agreement.

21. PCI COMPLIANCE FOR MERCHANTS. As a merchant or VS sub-merchant, if you accept payment for goods or services at your business location using credit cards issued by Visa, Mastercard, American Express or Discovery, then you will be obligated to maintain some level of compliance with Payment Card Industry Data Security Standards (“PCI-DSS”). RecTrac, LLC, as a payment facilitator, has its own obligations to maintain PCI-DSS compliance; but our obligations and your obligations are considered separate. For more information on what you must do to maintain PCI-DSS compliance, you can visit the Payment Card Industry Security Standards Council [website](#) where you can review best practices and access other helpful [documents](#). RecTrac, LLC shall not be liable for your failure to maintain PCI-DSS compliance; we may, however, from time to time, provide you with certain tools or resources to aid

in your compliance efforts. We reserve the right to charge a PCI non-compliance fee, of \$25.00 per MID, per month, not to exceed \$75.00 total per month, that may be used to help offset the cost of our PCI-DSS obligations. We may, in our sole discretion, use part of your PCI fee to provide you with tools that may help you in meeting your own PCI-DSS obligations.

22. DATA SECURITY. You agree to keep secure all systems containing account, End User, or transaction information (physical or electronic) and destroy in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. If you store End User account numbers, expiration dates, and other personal Cardholder Data in a database, you must follow Card Brand guidelines to secure such data. You may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. You shall maintain industry best practices regarding continuity procedures and systems to ensure security of End User account information in the event of a disruption, disaster, or failure of your respective data storage system and/or facility. For more information about security best practices, you can visit [here](#).

23. RESERVE ACCOUNT. We may, in our sole and absolute discretion, establish a reserve if we believe there is a risk of potential chargebacks, returns, or any other risk or liability associated with your use of the Payment Services, or to ensure current or future payment owed to us. We will provide you with notice of the reserve and the terms of the reserve. We may require that a certain portion of your transaction proceeds be held by us in reserve for a certain period of time, or that you make a lump sum payment for the reserve. You expressly authorize us to fund a reserve directly from the EFT/ACH draft associated with any Designated Account(s) owned or controlled by you, including but not limited to, those Designated Account(s) not immediately subject to chargeback risk or other potential liability. We may hold the reserve for as long as we deem necessary to mitigate the associated risk.

You understand and agree that if you are required to establish a reserve, you have an obligation under the Sub-Merchant Agreement to maintain the balance in the reserve set by us. We may, without notice, apply funds designated as reserves against any outstanding amounts owed to us under the Agreement. We may also debit the reserve to exercise our rights under the Agreement to collect any amounts due to us including, without limitation, rights of set-off and recoupment. You agree that you are liable for all obligations associated with your use of the Payment Services even after the release of any reserve.

24. SECURITY INTEREST. The Sub-Merchant Agreement will constitute a security agreement under the Uniform Commercial Code ("UCC") wherein you grant to us a security interest in and lien upon (a) all funds representing amounts owing you under the Agreement at any time, regardless of the source of such funds; (b) all funds at any time in reserve, regardless of the source of such funds; (c) present and future Card transactions; (d) any amount which may be due to you under the Agreement, including, without limitation, all rights to receive any remits or credits under the Agreement; and (e) upon our request, any other security to secure your obligations under the Agreement (collectively, the "Secured Assets"). You agree to execute financing statements or other documents to evidence this security interest. These security interests and liens will secure all of your obligations under the Sub-Merchant Agreement and any other agreements now existing or later entered into between you and us and we will have all rights afforded under the UCC, any other applicable law, and in equity. We may exercise this security interest without notice or demand by making an immediate withdrawal or freezing of your Secured Assets. You represent and warrant that no other person or entity has a security interest in the Secured Assets and you agree to obtain from us written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of

recoupment and as such, we are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by us.

25. REPRESENTATIONS AND WARRANTIES. You represent and warrant to us (a) that all information you submit to us relating to your application to use and continued use of the Payment Services is correct, complete, and fully describes and details the nature, type, and scope of the business in which you are engaged; (b) that you are at least 18 years of age; (c) that, if an individual account, you are a sole proprietorship validly existing in the United States, Canada, or its territories, and if an entity, that the entity was validly formed, registered and is in good standing in at least one of the fifty United States, Canada, or its territories; (d) that you have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, and if so, you have disclosed this to us; and (e) that all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from you and does not involve an End User obtaining cash from you unless allowed by the Rules and agreed in writing with us.

26. CONSENT TO CONTACT END USERS. If we are providing you with fully-managed Payment Services, you authorize us to contact your End Users at the telephone number listed in their End User Agreement, or at the contact information as shown in the relevant Company system, with regard to any matter pertaining to billing or payment on their account, including communications on past due balances owed. It shall be your responsibility to obtain End User consent for such communications in writing, making clear that these communications could take place on the phone, via text or through voicemail message using pre-recorded voice messages or an auto-dialing system. You agree to hold us harmless and will defend and indemnify us and our affiliates and subsidiaries from any liability arising under or

in connection with our communications with End Users under the Agreement, including, without limitation, your failure to obtain the necessary consents.

27. EVENTS OF DEFAULT. If any of the following events shall occur (each an “Event of Default”) (a) a material adverse change in your business, financial condition, business products or services; (b) any assignment or transfer of voting control of you or your parent; (c) a sale of all or a substantial portion of your assets; (d) irregular Card sales by you, excessive chargebacks, noncompliance with any applicable data security standard, as determined by us, of any Card Brands, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your chargebacks or otherwise present a financial or security risk to us; (e) any of your conditions, covenants, obligations, representations or warranties in the Agreement are breached in any material respect or are incorrect in any material respect when made; (f) you file a petition for bankruptcy, insolvency or similar arrangement for adjustment of debts; or (g) you violate any Rules, Laws and/or Policies, and you fail to cure, as applicable, within the prescribed period, then, upon occurrence of (i) an Event of Default specified in subsections (c), (d), (f) or (g), we may consider the Sub-Merchant Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you; and (ii) any other Event of Default, the Sub-Merchant Agreement may be terminated by us giving not less than 30 days’ notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

HOSTING SERVICES ADDENDUM

This Hosting Services Addendum (“Addendum”) between RecTrac, LLC d/b/a Vermont Systems (“VS,” “us,” “we,” or “our”) and City of Nixa (MO) (“Customer,” “you,” or “your”) is intended to revise the Services Agreement, inclusive of all relevant attachments, schedules, exhibits and/or Addenda (collectively, “Agreement”) previously or simultaneously executed between the Parties by adding to the Agreement the terms and conditions listed below. Terms not defined herein shall have the meanings provided in Section 1 of the VS [Terms of Service](#).

- 1. TERM.** The term of this Addendum will commence on the date executed by the Customer and will run coterminous with the Agreement.
- 2. HOSTING SERVICES.** Customer is adding VS’s Hosting Services to the suite of products and services that it is receiving from VS, as reflected in the updated Order Schedule.
- 3. HOSTING OBLIGATIONS.** Hosting of Customer Data on VS-controlled servers and systems does not come standard with all Agreements; Customers must specifically contract for hosting services and pay all associated Hosting Fees. **IF A CUSTOMER DOES NOT SELECT VS’S HOSTING SERVICES, AND INSTEAD CHOOSES TO HOST CUSTOMER DATA ON ITS OWN SYSTEMS AND SERVICES, THEN WE MAKE NO WARRANTIES AND DISCLAIM ALL LIABILITY ASSOCIATED WITH SUCH CUSTOMER DATA OR CUSTOMER’S OWN HOSTING ACTIVITIES, INCLUDING (BUT NOT LIMITED TO) INCIDENTS RESULTING IN DATA BREACH, MISAPPROPRIATION OF CUSTOMER DATA, VIOLATIONS OF PRIVACY RIGHTS, AND/OR ANY OTHER SITUATION RESULTING IN DAMAGES OR MONETARY LOSS ARISING OUT OF OR RELATING TO THE HOSTING OR STORAGE OF CUSTOMER DATA.** If Customer chooses us for hosting services, and we actually store Customer Data on a VS-controlled system or service, then, in addition to those terms and conditions described in our Privacy Policy, and provided Customer remains current in its payment of Hosting Fees and otherwise compliant with the Agreement, then we make the following limited representations and warranties with respect to our hosting services: we will, at all times during the Term of the Agreement: (a) maintain a comprehensive data security program which includes reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Customer Data (including Patron Data, as applicable) which measures will be no less rigorous than the accepted security standards for similarly situated companies in the industry; and (b) provide our hosting services in a good and workmanlike manner; and (c) offer hosting services which, to the best of our knowledge, comply with applicable local, state or federal laws. The limited representations and warranties described herein shall be subject to any other limitations of liability described by the Agreement.
- 4. CUSTOMER DATA GENERALLY.** You represent and warrant that you own or have appropriate rights to all of your Customer Data. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or rights to use of all Customer Data (including Patron Data, as applicable). Except as specifically provided for in the Agreement, we shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of your Customer Data.
- 5. RETURN OF CUSTOMER DATA.** If we are providing you with hosting services, then you shall have access to your Customer Data (including Patron Data, as applicable) for the duration of the Term, subject to the terms and conditions of the Agreement. Upon termination of the Agreement, or where you properly cancel hosting services during the Term, your access to any VS-hosted Customer Data will end immediately on the same day in which you cancel or terminate the Agreement; provided, however, that you may request continued access to your Customer Data for a period not to exceed 30 days (unless we specifically agree otherwise) and subject to additional fees for the limited purpose of transferring your Customer Data to your own systems or servers. Upon termination of the Agreement, or cancellation of your hosting services with us, we may, but shall not be required to, store or hold your Customer Data on our servers at our cost and expense, or immediately destroy your Customer Data unless prohibited by applicable law. Notwithstanding the foregoing, we reserve the right to maintain a copy of any other

record, book, file and other data, as specified in the Agreement and in such detail as shall properly substantiate claims for payment, for a minimum of one (1) year beginning on the first day after the Agreement is properly terminated, or for such longer period as may be necessary for the resolution of any dispute, negotiation, audit, or other inquiry involving the Agreement.

- 6. HARDWARE.** We shall have no obligation to provide you with the Hardware necessary to access our Services or use our Software. Any Hardware used must comply with our minimum system requirements. If we choose to provide you with Hardware, a description of such Hardware and pricing will be described in your Order Schedule. In the absence of specified pricing, we may provide you with Hardware at our then-current market rates. Full payment for Hardware and any related third-party software is due following delivery. The verification process must be completed so that all payments can be made within 30 days of delivery. Any VS-supplied Hardware will include warranties from the manufacturer or distributor, as applicable, for a specific period. We offer no warranties on Hardware.
- 7. PAYMENT TERMS.** You agree to pay us all Fees permitted by the Agreement. Fees for specific Services are described in the Order Schedule and may be set up to bill quarterly or annually, as we and you may decide. All Fees are based on Services provided, not on your actual usage. Except as permitted by the Agreement, all Fees paid are non-refundable. Payment is due within 30 days from the date you receive our invoice (the "Due Date"). If you do not pay our invoice by the Due Date, then we may charge you a late fee of \$100. All payments are due in U.S. dollars. Unpaid balances owed to us will accrue interest at the rate of 1.5% per month. Please report any errors that you see on an invoice immediately. If you do not dispute a charge within 30 days after receiving it, you will be considered to have accepted the charge. After the Initial Term, all Fees shall be subject to a cost of living and technology ("COLT") enhancement increase of the greater of five percent (5%) or the aggregate change in the CPI (Consumer Price Index). VS reserves the right to apply the COLT enhancement to any Fees at the start of each Renewal Term, in its sole and absolute discretion.
- 8. BREACH FOR NON-PAYMENT OF FEES.** Payment not made within 30 days of the Due Date will result in an automatic breach of the Agreement and start the clock on a 20-day period in which to cure. If payment is still not received by the 51st day after the scheduled Due Date, we reserve the right to suspend Services until all outstanding Fees are paid. Continued non-payment of Fees more than 60 days after the Due Date will result in a default under the Agreement. In the event of default, all payments otherwise due to us under the Agreement will be accelerated and will be considered due and payable by you immediately, as of the date of default. We shall have no obligation to release any of your Customer Data until all outstanding Fees are paid in full.
- 9. CHANGING THE TERMS OF SERVICE.** We reserve the right to modify these Terms of Service by posting a revised Terms of Service on our website and sending you notice that they have changed to your email address on record. Modifications will not apply retroactively. You are responsible for reviewing and becoming familiar with any modifications. At times we may, but shall not be required to, ask you to review and to explicitly agree to or reject a revised version of the Terms of Service. In such cases, modifications will become effective at the time you sign your consent to the modified Terms of Service. In cases where we do not ask for your explicit consent to a modified version of the Terms of Service, but otherwise provide notice as set forth above, the modified version of the Terms of Service will become effective 14 days after we have posted the modified Terms of Service and provided you with notification. Your continued use of Services following that period constitutes your acceptance of the Terms of Service as modified. If you do not agree with the changes to the modified Terms of Service, you are required to notify us of such within the same 14-day period and we will have the sole right to decide whether to revert to the original Terms of Service or insist on the changed Terms of Service and permit you to terminate the Agreement without cause and without penalty.
- 10. CHANGING THE ORDER SCHEDULE.** You may add or remove Services during the Term at any time provided that we agree to such changes. We reserve the right to change our fees and/or introduce new charges at any time with at least 30 days prior notice to you, which notice may be provided by email. Regardless of whether our discussion with you about changes in Services occurred verbally or in writing, we will document any Service changes in an

updated invoice which we will send to you for review. If you disagree with the Service change, as reflected in the invoice, please notify us immediately. If you pay the updated invoice, accept the benefits of any added Services, or fail to object to the updated invoice within 14 days after you receive it, we will consider you to have accepted the changes, which will be considered a valid modification of any Order Schedule then in place (which will, in turn, update the Agreement automatically).

- 11. REMOTE ACCESS AUTHORIZATION.** We will provide you with on-going support or updates for the proper functioning of our Services, including the Software, which we can only provide or make available through remote access to your technology systems. By using our Services, or accessing our Software, you expressly authorize us to access your technology systems remotely for the limited purpose of providing you with any support or updates relevant to our Services. You shall be solely liability for the cost, interoperability, proper functioning, and security of any remote access facilities or methods used by you, and we shall not be deemed to be in violation of our obligations to you, nor in breach of the Agreement, as the result of our inability to remotely access your technology systems. Our right of remote access as described herein shall be deemed a continuing right until such time as the Agreement terminates, for any reason. We agree to use commercially reasonable efforts to comply with any of your published security-related protocols when remotely accessing your technology systems.
- 12. PROFESSIONAL SERVICES.** We reserve the right to provide you with an estimate of fees for Professional Services based on the approximate number of hours we think will be reasonably required to complete an engagement, multiplied by a fixed hourly rate. If we underestimate the fees for Professional Services based on work actually performed, you will be responsible any cost overruns at the same hourly rate. We will invoice you separately for cost overruns. To help you track and plan for any cost overruns, we will track our actual Professional Service hours and, upon written request, provide you with a weekly time report. Any specific details of an engagement for Professional Services should be described in a Statement of Work and signed by the parties. Any fees for Professional Services will be considered part of the Fees owed under the Agreement.
- 13. PROHIBITED USE.** You shall not use our Services in violation of the law, whether local, state or federal (including but not limited to the CAN-SPAM Act, the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, the Americans with Disabilities Act, or any consumer protection statute); to intentionally bypass a security mechanism in the System(s); to reverse-engineer the System(s), or any component thereof, regardless of the reason why; in a way that adversely impacts the availability, reliability or stability of the System(s), or any component thereof; to intentionally transmit material using the System(s) which contains viruses, Trojan horses, worms or some other harmful computer program; to send unsolicited advertising, marketing or promotional materials, whether by email or text, without the recipient's legally-valid consent; to commit fraud; to transmit material that infringes on the intellectual property right of others; to transmit material that is harassing, discriminatory, defamatory, vulgar, pornographic, or harmful to others; or in violation of this Agreement. Violation of this Prohibited Use policy may result in immediate suspension or discontinuation of Services, or legal action which could result in civil damages or criminal punishment.
- 14. OWNERSHIP RIGHTS.** (a) We reserve all title and interest to our Intellectual Property Rights. We alone own our Intellectual Property Rights, in addition to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you or any other party relating to our Services. In addition, we retain all rights, title and interest in and to our Software and any splash page designs that we may create and/or maintain on your behalf and license to you. The Vermont Systems™, VS™ and VS Payments™ names and logos are registered trademarks of RecTrac, LLC, and no right or license is granted to use them without our express written permission. (b) With the exception of Patron Data (which remains the property of individual Patrons), you reserve all rights, title and interest to your Customer Data. You own all rights, title and interest to Customer trademarks, service marks and other intellectual property. We reserve the right to withhold, remove and/or discard your Customer Data without notice for any breach, including without limitation, your non-payment of Fees.
- 15. CUSTOM DEVELOPMENT.** While we welcome any suggestions or comments you might have about how we can improve our products and services, we do not custom develop our Services (including the Software) to suit the

business needs of any particular client. We will consider all suggested improvements to the Services, and, as we determine, will incorporate any approved items to our development roadmap. If there is a feature or functionality that you would like to see added to our Services, and you would like the project completed on a certain timeline, you can make a custom development request and, based on our staffing and other considerations, we will scope the project and provide you with a written quote which you can accept or reject. Custom development work will be considered a separate engagement for Professional Services and will be billed outside of the Agreement. Custom development work shall not be considered work-for-hire. We will own and control any product outcome of the engagement and we reserve the right to incorporate any new feature or functionality into our larger product or service offerings.

16. LIMITED WARRANTIES. We represent and warrant that (a) we own the appropriate rights to license and/or sublicense our Services (including the Software); (b) the Services (including the Software) will conform with any then-available published specifications; (c) to the best of our knowledge, our Software is free of any viruses, Trojan horses, malware, spyware, ransomware or other harmful code; and (d) that there have been no violations of copyrights or patent rights in connection with the Services (including the Software) offered. We do not warrant that the Services (including the Software) will be entirely free from defect or error. EXCEPT AS SPECIFICALLY STATED HEREIN, THE SERVICES (INCLUDING THE SOFTWARE) ARE BEING PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. No advice or information, whether written or oral, obtained from us, or any member of our Team, will create any warranty not expressly made. If you are a California resident, you waive California Civil Code § 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

17. LIMITATIONS OF LIABILITY.

17.1 EXCLUSIVE REMEDY. YOUR EXCLUSIVE REMEDY FOR ANY FAILURE OF OUR OBLIGATIONS UNDER THE AGREEMENT SHALL BE YOUR RIGHT TO TERMINATE THE AGREEMENT FOR CAUSE AND WITHOUT PENALTY, AND ANY CREDITS WHICH MAY BE DUE UNDER AN APPLICABLE SERVICE LEVEL AGREEMENT (IF A SERVICE LEVEL AGREEMENT IS OFFERED AS PART OF THE AGREEMENT).

17.2 EXCLUDED DAMAGES. IN NO EVENT SHALL WE BE LIABLE OR RESPONSIBLE TO YOU FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICES OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER A THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

17.3 DAMAGES CAP. IN NO EVENT SHALL OUR LIABILITY TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCES EXCEED THE AMOUNT OF FEES YOU ACTUALLY PAID TO US FOR SERVICES IN THE THREE (3) MONTH PERIOD DIRECTLY PRIOR TO THE ACTION GIVING RISE TO ALLEGED LIABILITY.

17.4 TIME LIMITATION. YOU FURTHER AGREE THAT ANY CLAIM WHICH YOU MAY HAVE AGAINST US MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM AROSE, OTHERWISE THE CLAIM SHALL BE PERMANENTLY BARRED.

17.5 MATERIALITY. THE LIMITATIONS IN THIS SECTION ARE A MATERIAL BASIS OF THE BARGAIN, AND THE TERMS OF THE AGREEMENT WOULD BE DIFFERENT WITHOUT SUCH LIMITATIONS. THE LIMITATIONS IN THIS SECTION ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. MULTIPLE CLAIMS WILL NOT ENLARGE ANY DAMAGES CAP DESCRIBED HEREIN.

18. INDEMNIFICATION. You shall indemnify and defend us (including any member of our Team) and hold us harmless against any claim, suit, demand or proceeding (“Claim”) that arises from your actions, your use or misuse, of the Services (including, but not limited to, the Software); your breach of the Agreement or these Terms of Service; or your infringement on someone else’s rights, including but not limited to, third party intellectual property rights. We reserve the right to handle our own legal defense however we see fit, even if you are indemnifying us, in which case you agree to cooperate with us so we can execute our strategy. Our indemnity rights shall include all costs associated with the Claim or Claims, including attorneys’ fees, court costs, dispute resolution costs, and/or fees associated with collection.

19. PRIVACY RIGHTS. You are required to comply with our [Privacy Policy](#), which may be revised from time to time, and which are expressly incorporated into the Agreement.

20. NOTICES; GOVERNING LAW; JURISDICTION.

20.1 General. Who you are contracting with under this Agreement, who you should direct notice to under this Agreement, what law will apply in any lawsuit arising out of this Agreement, and which court can adjudicate any such lawsuit to this Agreement are as follows:

Who you are contracting with:	RecTrac, LLC
Notices to be sent to:	12 Market Place Essex Junction, VT 05452 legal@vermontsystems.com
Governing law is:	Vermont
Courts having exclusive jurisdiction are:	State courts of Chittenden County, Vermont, or the U.S. District Court for Vermont.

20.2 Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to you shall be addressed to the designated contact person identified in the Services Agreement at the email address or physical address listed.

20.3 Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

20.4 Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

21. MINIMUM SYSTEM REQUIREMENTS. It is your responsibility to ensure your computer systems, internet connections, IT infrastructure, peripherals, systems, servers, mobile devices and/or workstations comply with the minimum system requirements necessary to receive our Services. We shall not be responsible for any internet speed or connectivity issues at your location, or other problems related to your technology equipment, including third party internet service or your IT infrastructure.

22. LEGAL ADVICE. All Professional Services and other information provided to you in the normal course of our business relationship should be considered for informational purposes only and is not to be taken as legal advice. You are advised to speak with your own independent counsel about all matters of a legal nature.

23. ASSIGNMENT. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding

the foregoing, we may assign this Agreement in its entirety without your consent, to our affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets not involving one of your direct competitors. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

24. FORCE MAJEURE. We shall not be in default under any provision of the Agreement or be liable for any delay, failure of performance or interruption in Services (including the Software) resulting, directly or indirectly, from causes beyond our reasonable control, including but not limited to any of the following: earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; hurricanes; fire; flooding; severe weather conditions; actions of governmental or military authorities; national emergency; insurrection, riots or war; terrorism or civil disturbance; strikes, lock-outs, work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other internet provider failure.

25. CONSENT TO DO BUSINESS ELECTRONICALLY. By signing the Services Agreement, you consent to do business electronically, which means that you agree that all VS agreements and policies, including amendments thereto and documents referenced therein, as well as any notices, instructions, or any other communications regarding transactions and your agreements with VS may be presented, delivered, stored, retrieved, and transmitted electronically. You must keep us informed of any change in your electronic or mailing address or other contact information. Your electronic signature, including, without limitation clicking "Agree and Continue" or "I Accept" or an action of similar meaning or significance, shall be the legal equivalent of your manual signature. You may withdraw your consent to doing business electronically at any time by contacting us and withdrawing your consent. However, any communications or transactions between us before your withdrawal of such consent, will be valid and binding.

26. CONFLICTING PROVISIONS. Except as expressly revised in this Addendum, the Agreement will remain in full force and effect. If there is any conflict of inconsistencies between this Addendum and the Agreement, this Addendum will control. VS's acceptance may be evidenced by its fulfillment of the Agreement which this Addendum revises. Except as otherwise described in this Section, no modification of this Agreement, including, but not limited to, subsequent terms included within your Purchase Orders, will be binding unless in writing and manually signed by an authorized representative of the parties.

27. GENERAL.

27.1 Waiver; Cumulative Remedy. No failure or delay by either party in exercising any rights under the Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided in the Agreement are in addition to, and not exclusive, of any other remedies of a party at law or in equity.

27.2 Severability. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of the other provisions of the Agreement, which provisions will remain in full force and effect. If any provision of this Agreement shall be deemed unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination will alter such provisions so that it is enforced and will enforce it in its altered form for all purposes contemplated by the Agreement.

27.3 Construction. For purposes of the Agreement, wherever the context requires, the singular shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter gender, and vice versa; and "and" shall include "or," and vice versa. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of the Agreement.

27.4 Entire Agreement. The Agreement, as modified by this Addendum, make up the entire Agreement and supersede all prior agreements, representations, and understandings. All additional terms and/or Addenda will be considered incorporated into the Agreement when you agree to them. If there is an actual conflict or direct inconsistency between any of the attachments, schedules or exhibits referenced in the Services Agreement, then the following shall be the

prioritization of documents that should be deemed to control and govern: first, any later-signed Addenda or Statement of Work (as applicable); then the Services Agreement; then the Service Level Agreement (as applicable); then the Terms of Service; then the Privacy Policy.

AGREED TO BY:

City of Nixa MO

Matt Crouse
Director of Parks and Recreation

Date

ACCEPTED BY:

RecTrac, LLC d/b/a Vermont Systems

Scott Strong
President

Date