

Item# 23-0555

Munis Contract#

CITY OF SANTA FE GENERAL SERVICES CONTRACT

Software and Configuration

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and Vermont Systems Enterprise Software Solutions herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to (Vermont Systems Enterprise Software Solutions). "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. Scope of Work

A. The Contractor shall perform the following work: Work is to be performed in accordance with Quote: 13462-M3T4C9, Exhibit A. Deliverables stated for Vermont Systems Enterprise Software Solutions. Vermont Systems shall provide Enterprise software solutions, 148hrs discovery and training, 16hrs Golf and Tee times set up and training, Web Trac set up, 20 Star CD3 Cash Drawer Dumb, 18 Honeywell Genesis Barcode Scanner, 16 Star TSP143IIIU Thermal Printer, 250 Key Fob Pre-Printed (TEEN CENTER), 500 Key Fob Pre-Printed (All Recreation Locations).

3. Compensation

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01		Total Cost Upon Completion of Vermont Systems Install \$141,757.00

The total compensation under this Agreement shall not exceed \$148,667.65 including New Mexico gross receipts tax of \$6,910.65.

4. Payment Provisions

All payments under this Agreement are subject to the following provisions.

A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been

accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

- B. **Payment of Invoice** - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end **Twelve Months** from the Date of Signing. The City reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. **Grounds**. The City may terminate this Agreement for convenience or cause. The City can terminate for convenience after the initial term with a 30-day written notification. The Contractor does not accept mid-cycle cancellations. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. **Notice; City Opportunity to Cure**.

1) Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written notification of the City.

11. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

12. **Non-Collusion**

In signing this Agreement, the Contractor/Contractor certifies the Contractor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. This includes the Contractor's Hosting, and PayTrac Addendums, and Privacy Policy listed as Exhibit B, C, and D.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. Incorporation by Reference and Precedence

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. Workers' Compensation

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

31. Inspection

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. Inspection of Services

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. **Commercial General Liability** insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. **Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

C. **Broader Coverage and Limits.** The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

34. **Impracticability of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. Patent, Copyright and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- 1) give the Contractor prompt written notice within 48 hours of any claim;
- 2) allow the Contractor to control the defense of settlement of the claim; and
- 3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- 1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- 2) replace or modify the product or service so that it becomes non-infringing; or,
- 3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. Survival

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records

in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

40. Suspension, Delay or Interruption of Work

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

41. Notification

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City: City of Santa Fe ITT
1600 St. Michaels Dr BLD 24
Santa Fe NM 87501

To the Contractor: Vermont Systems
12 Market Place
Essex Junction, VT 05452

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

To the Contractor: Vermont Systems
12 Market Place
Essex Junction, VT 05452

42. Succession

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

John Blair
John Blair (Sep 13, 2023 12:46 MDT)
JOHN BLAIR; CITY MANAGER

DATE: Sep 13, 2023

CONTRACTOR: Patrick Hayden (Vermont Systems)
8A303E37F0E94AA...

Patrick Hayden (Vermont Systems)
NAME

President
TITLE

DATE: 8/28/2023
CRS#

Registration #

ATTEST:
Kristine Bustos Mihelcic
KRISTINE BUSTOS MIHELICIC, CITY CLERK
XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez
Marcos Martinez (Aug 28, 2023 07:57 MDT)
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (Sep 13, 2023 12:34 MDT)
EMILY OSTER, FINANCE DIRECTOR

6203600.530710
Org.Name/Org.# AH
AH

I. EXHIBIT A

HOSTING SERVICES ADDENDUM

This Hosting Services Addendum ("Addendum") between RecTrac, LLC d/b/a Vermont Systems ("VS," "us," "we," or "our") and the City of Santa Fe ("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.

1. **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.
2. **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.
3. **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.
4. **PAYMENT TERMS.** All Fees are based on Services provided, not on your actual usage. Except as permitted by the Agreement, all Fees paid are non-refundable. After the **FIRST 12 MONTHS** of 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.

5. **BREACH FOR NON-PAYMENT OF FEES.** 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. We shall have no obligation to release any of your Customer Data until all outstanding Fees are paid in full.
6. **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.
7. **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 SystemsTM, VSTMTM, PayTracTM and VS PaymentsTM 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.
8. **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 is settlement with the debtor.”

9. **PRIVACY RIGHTS.** You are required to comply with our Privacy Policy, as Exhibit C which may be revised from time to time, and which are expressly incorporated into the Agreement.

EXHIBIT B
PAYTRAC PAYMENT SERVICES ADDENDUM

This PayTrac Payment Services Addendum ("Addendum") between RecTrac, LLC d/b/a Vermont Systems ("VS") and the City of Santa Fe ("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. **PAYMENT SERVICES.** Customer is adding VS PayTrac Payment Services to the suite of products and services it is receiving from VS (as reflected in the Order Schedule). 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 PayTrac Payment Service Terms & Conditions, each of which shall be incorporated by reference into the Agreement.
2. **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.
3. **SUB-MERCHANT AGREEMENT.** These PayTrac Payment Service Terms and Conditions govern the terms and conditions under which we, as a payment facilitator, will agree to provide you, as a sub-merchant, with certain payment-related services. For purposes of this Sub-Merchant Agreement, the sub-merchant identified in the Sub-Merchant Application and Agreement ("SMAA") will be identified as "you," "your," or "Sub-Merchant." These Payment Terms and Conditions, together with your completed and approved SMAA, will form a binding "Sub-Merchant Agreement" between you and the payment facilitator identified in the SMAA ("we," "us," "our," or "Payment Facilitator"). If you are receiving Payment Services (defined below) from us, then your Sub-Merchant Agreement will become part of your overall Agreement with us, which Agreement includes, in addition to the Sub-Merchant Agreement, our Terms of Service, Privacy Policy and other referenced exhibits, schedules or addenda. Terms not defined herein shall have the meanings as set forth in Section 1 of the Terms of Service.
4. **PAYMENT SERVICES.** Provided you satisfy the underwriting criteria for receipt of Payment Services and remain in compliance with the Agreement, we will agree to provide you with the payment services as described in the Agreement (collectively, "Payment Services"). In exchange for Payment Services, you agree to pay us the rates, fees and other charges described in the Agreement (collectively, "Fees"). Besides us, there are other third parties involved in the facilitation and processing of Payment Services; these third parties include banks (i.e., acquiring bank, sponsor bank), the major card networks/associations such as Visa, Mastercard, Discover and American Express (collectively, "Card Brands" unless referred to individually by name), and our designated payment processor ("Processor"). Each of these parties serve an important function in the facilitation, processing and settling of transactions associated with your business. By designating us as your agent for payment facilitation services, and remaining in compliance with the terms of the Agreement (including payment of all of our Fees), you will receive the right to accept payments from customers, clients and/or members (collectively, "End Users") through validly issued bankcards ("cards") associated with the

Card Brands, and/or, if approved, through automated clearing house transactions ("ACH") regulated by the National Automated Clearing House Association ("NACHA"). We will only provide you with Payment Services for transactions run on active, non-defaulted End User agreements properly delivered to us through the appropriate system in accordance with the Agreement's terms and conditions including, without limitation, this Sub-Merchant Agreement.

5. APPLICATION PROCESS; UNDERWRITING; APPROVAL FOR PAYMENT SERVICES.

Completion of the SMAA and submission through our standard underwriting process shall be a pre-requisite and pre-condition to your receipt of Payment Services. If you fail to meet our then-current underwriting requirements, or the then-current underwriting requirements of our Processor (as applicable), you shall not be allowed to receive Payment Services. Federal regulations such as the USA Patriot Act or FinCEN require financial institutions (i.e., banks) to verify the identity of persons seeking to open a depository account. Our Processor, in turn, requires that we submit certain information about each sub-merchant through underwriting prior to such sub-merchant's receipt of payment services. Information that we may request includes, but is not limited to, basic sub-merchant information such as entity name, business address, tax number, date of formation, years in business; transaction information, processing volumes, payment types accepted, address of business locations where payments may be accepted; and information about who owns and controls the sub-merchant. It shall be your sole responsibility to provide us with all required information, to ensure the accuracy and completeness of the information provided, to provide us with timely and accurate updates if your information changes, and to make the required acknowledgements and authorizations related to Payment Services as described in the Sub-Merchant Agreement. We (and our Processor, as applicable) will base underwriting decision on the information provided. If, after approval, we discover that certain information provided in the SMAA was false, incomplete, misleading or inaccurate, as determined by us or our Processor, we reserve the right to suspend or terminate Payment Services immediately at our discretion. If you pass underwriting and your application is approved, then your SMAA will automatically convert to a Sub-Merchant Agreement which incorporates these Payment Terms & Conditions (and other documents forming the Agreement) by reference. Underwriting approval and conversion of your application to a Sub-Merchant Agreement may occur without notice to you. Your failure to notify us of changes to your business may be considered a material breach of the Sub-Merchant Agreement. You expressly authorize us to make business and/or personal credit inquiries (including, without limitation, credit report inquiries into your directors, officers and principals), identity-verification inquiries, transaction-verification inquiries (including, without limitation, contacting End Users to verify transactions), and any other inquiry or background check that we consider reasonably necessary as related to our provision of the Payment Services. You further agree to provide us with any information or documentation requested by the Processor, the Card Brands and/or the bank(s).

- 6. DESIGNATION AS LIMITED PAYMENTS AGENT.** By entering into this Sub-Merchant Agreement, you are appointing us as your limited payments agent for the sole purpose of receiving, holding and settling payments made to you for your goods and services as validly entered in and through our system or platform. We will settle payments that are actually received by us to you, less any amounts owed to us, including fees and other obligations, and subject to the terms and conditions of the Agreement, including without limitation, this Sub-Merchant Agreement. You agree that a payment received by us on your behalf satisfies an End User's (i.e., a payor's) obligation to make payment to you, regardless of whether we actually settle the payment to you. If we do not settle the payment to you, you will only have recourse against us and not the End User, as payment is deemed made by an End User to you upon constructive or actual receipt of funds by us. We will process transactions in accordance with your written instructions, the agreement(s) in place with us or End Users, and applicable law, rules or regulations. **DESIGNATED ACCOUNT.** You will be required to open and maintain a business bank account with a U.S.-chartered bank (your "Designated Account," or, if you have more than one account, your "Designated Accounts"). Each sub-merchant entity must

have its own Designated Account and the name on the Designated Account must match the sub-merchant's legal entity name or registered doing-business-as name. All remits or other deposits to you as associated with Payment Services will be made into your Designated Account(s).

7. **PROHIBITED ACTIVITIES.** In receiving Payment Services, you shall not, through yourself or a third party: (a) submit any transaction to us that was previously charged back and subsequently returned to you, irrespective of cardholder approval; (b) knowingly submit any transaction that is illegal or that you should have known was illegal (you acknowledge that such transaction must be legal in both your and the cardholder's jurisdiction); (c) submit a transaction that you know, or should have known, is either fraudulent or not authorized by the cardholder; (d) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, nor request a Card Verification Value 2 ("CVV2") for a card-present transaction, nor retain or store any portion of the magnetic-stripe data subsequent to the authorization of a sales transaction, nor any other data prohibited by the Card Brands operating regulations or this Sub-Merchant Agreement, including CVV2; (e) add a surcharge to transactions except as expressly permitted by, and in full compliance with, the Card Brands operating regulations; (f) charge a minimum or maximum amount for a transaction unless expressly authorized by, and in full compliance with, the Card Brands operating regulations; (g) disburse funds in the form of cash unless you are participating in full compliance with a program supported by a Card Brand for such cash disbursements and in full compliance with the Card Brand's operating regulations; (h) submit a transaction that does not result from an act between you and a cardholder; (i) accept a card issued by a U.S. issuer to collect or refinance an existing debt, unless expressly authorized by, and in full compliance with, Card Brand operating regulations; (j) request or use a card account number for any purpose other than as payment for your goods or services; (k) add any tax to transactions, unless applicable law expressly requires that you are permitted to impose a tax (in such event, any tax amount, if allowed, must be included in the transaction amount and not collected separately); (l) process transactions for, receive payments on behalf of, or redirect payments to a third party (unless required by law); (m) copy, modify, adapt, translate, reverse engineer, decompile, or disassemble, in any way, any portion of the Payment Services; (n) interfere with or violate any other of our services or End User's right to privacy or other rights, or harvest or collect personally identifiable information about End Users without their express consent, including using any robot, spider, site search or retrieval application, or other manual or automatic device or process to retrieve, index, or data-mine; (o) defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights of others; (p) transmit or otherwise make available in connection with the Payment Services any virus, worm, trojan horse, time bomb, web bug, spyware, or any other computer code, file, or program that may or is intended to damage or hijack the operation of any hardware, software, or telecommunications equipment, or any other actually or potentially harmful, disruptive, or invasive code or component; (q) interfere with or disrupt the operation of the Payment Services, or the servers or networks that host the Payment Services or make them available, or violate any requirements, procedures, policies, or regulations of such servers or networks; (r) sell, license, or exploit for any commercial purposes any use of or access to the Payment Services other than as permitted by us; (s) forward any data generated from the Payment Services without our prior written consent; (t) sublicense any or all of the Payment Services to any third party; and/or (u) transfer or assign your account password or credentials, even temporarily, to a third party. We reserve the right to monitor you and your End User's use of the Payment Services to ensure compliance with the Agreement including, without limitation, this Sub-Merchant Agreement and applicable law. If we determine that you are not in compliance with the Sub-Merchant Agreement, we reserve the right to take appropriate remedial action including, without limitation, suspending or terminating Payment Services, or suspending or terminating your access to the system or platform. In receiving Payment Services, you further acknowledge, represent and warrant that you will not make Payment Services available to (i) any person who appears of the U.S. Department of Treasury Office of Foreign Assets Control Specially Designated Nationals list; (ii) any person who is less than 18 years of age; (iii) any person or entity who has been previously

terminated for cause by us, or any of our affiliates; and (iv) who is not domiciled in the U.S.

8. **SUB-MERCHANT REPRESENTATIONS.** You represent and warrant that (a) you are at least 18 years of age; (b) 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; (c) 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 (d) 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.
9. **END USERS.** We are not a party to any contract or business relationship that you may have with End Users, and we shall have no obligations or liability under any such agreement or business relationship. You are solely responsible for your own products and services, and for the content and legality of your own contracting documents with End Users ("**End User Agreements**"). Notwithstanding the foregoing, to the extent we determine that the language in your End User Agreement is inadequate to protect our interests or authorize Payment Services (and, specifically, the billing of End User accounts for your products and/or services), we may require you to include a payment authorization provision acceptable to us in your End User Agreement. If you fail to include such a provision in your End User Agreements, we may consider this a material breach of the Sub-Merchant Agreement and/or suspend Payment Services (permanently or temporarily) based on your non-compliance. We make no representations or guarantees with respect to End User fund availability, that a transaction is or will be authorized or processed, or that a transaction will not later result in a chargeback or reversal. If we are providing you with "fully-managed" Payment Services, then, in addition to your other authorizations, you expressly authorize us to contact your End Users at the telephone number listed in their End User Agreement, or at the End User's contact information available in the system or platform, about any matter pertaining to billing or payment on the End User's account including, without limitation, communications about past due balances that may be owed. It shall be your sole responsibility to obtain End User consent for such communications in writing, making clear that these communications may take place by phone, email, text or voicemail message using pre-recorded voice messages or an automatic telephone dialing system. You agree to defend, indemnify and hold us harmless for any liability related to or arising from our interactions with your End Users including, without limitation, our communications with your End Users about matters related to Payment Services.
10. **REGULATORY STATUS.** In providing Payment Services to you, we are your designated agent for certain payment facilitation services, as integrated with our proprietary technologies, but always acting at your direction in accordance with the contracts that have been entered into including, without limitation, the Sub-Merchant Agreement. We are not a bank, money transmitter or other money services business. The Payment Services that we offer and the payment transactions that we help to facilitate involve the use of our own proprietary technologies and the efforts of third parties such as banks, the Card Brands, and our Processor.
11. **TERM; TERMINATION OF PAYMENT SERVICES.** The term of this Sub-Merchant Agreement will run concurrently with the Term as described in your Agreement. As applicable, if we have entered into a Master Vendor Agreement with your franchisor, then the term of this Sub-Merchant Agreement will run concurrently with the Term as described in the Master Vendor Agreement. We shall have the right to terminate this Sub-Merchant Agreement at any time for any reason, or for no reason, and shall have no liability to you for any such termination. Upon termination, you shall immediately

cease using the Payment Services. We shall have the right to delete your Designated Account information upon termination of the Sub-Merchant Agreement, but we shall also have the right, at our choosing, to retain copies of such information for up to five (5) years at our cost. This Sub-Merchant Agreement shall terminate immediately if a bank, the Card Brands or our Processor require us to terminate the Sub-Merchant Agreement. Upon termination of Payment Services for any reason, you shall remain liable for any and all outstanding Fees owed.

12. **TAXES.** It is your sole 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 (“**Taxes**”). It is solely your responsibility to assess, collect, report, or remit the correct tax to the proper taxing 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. We will also comply with any lawful orders, garnishments or tax levies associated with your account. This provision shall be read in conjunction with, and not in conflict of, any tax-related provision in the Terms of Service.

13. **CARD BRAND RULES.** If you accept cards issued by any of the major Card Brands, then in addition to these Payment Terms and Conditions, you will also be obligated to comply with Card Brand rules and regulations, the terms of which are incorporated by reference herein. The operating regulations for each of the major Card Brands can be accessed at the links below:
 - a. **VISA:** usa.visa.com/merchants/operations/op_regulations.html
 - b. **Mastercard:** <https://www.mastercard.us/en-us/business/overview/support/rules.html>
 - c. **American Express:** www.americanexpress.com/merchantopguide
 - d. **Discover:** <https://www.discovernetwork.com/en-us/faq>
 - e. For transactions involving **ACH**, a copy of the NACHA operating rules and guidelines are available at www.achrulesonline.org.
 - f. Nothing in this Sub-Merchant Agreement shall be read or construed to interfere with or lessen the right of the Processor, the bank(s), or the Card Brands to terminate this Sub-Merchant Agreement; and, if this occurs, such termination shall not be considered a material breach of the Agreement by us. In the event of a conflict between this Sub-Merchant Agreement and the Card Brand’s operating regulations, the Card Brand operating regulations will control. With respect to the Card Brand operating regulations, you acknowledge and agree that: (a) you will be responsible for the actions of your employees and agents; (b) you will comply with all applicable laws and regulations and all applicable parts of the operating regulations, including those parts regarding the ownership and use of Card Brand marks; (c) you will notify us, as your payment facilitator, of any third-party that will have access to Cardholder Data; (d) you will comply with, and will contractually require your suppliers and agents to comply with, the provisions of the Cardholder Information Security Program (CISP) and PCI DSS, or other security program as required by a Card Brand and demonstrate compliance with these security obligations; and (e) Card Brands may conduct, or direct another party to conduct, an audit of

you at any time, and you must comply in all material respects with such audit until its completion.

- 14. AMERICAN EXPRESS OPT-BLUE PROGRAM.** The following provision only applies if you are participating in the American Express Opt-Blue Program, as controlled by the American Express OptBlue Program operating regulations. As a participant in the American Express Opt-Blue Program: (a) you must comply with, and accept American Express cards in accordance with the terms of this Sub-Merchant Agreement and the American Express Merchant Operating Guide, as such terms may be amended from time to time; (b) you acknowledge that the American Express Merchant Operating Guide is incorporated by reference into this Sub-Merchant Agreement and is available online here; (c) you expressly authorize us to submit transactions to, and receive settlement from, American Express on your behalf; (d) you expressly consent to our collection and disclosure of transaction data, Sub-Merchant Data, and other information about you to American Express, and to American Express using such information to perform its responsibilities in connection with the American Express Program, promote the American Express network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communication purposes within the parameters of the program agreement, and important transactional or relationship communications from American Express. In addition, you acknowledge and agree that: (i) you may opt-out from receiving future commercial marketing communications from American Express; (ii) you may be converted from the American Express Program to a direct card acceptance relationship with American Express if and when you become a high CV merchant in accordance with Section 10.5, "High CV Merchant Conversions," and upon conversion, you will be bound by American Express' then-current Card Acceptance Agreement and American Express will set pricing and other fees payable by you for card acceptance; (iii) American Express may use information obtained in the SMAA at the time of setup to screen, communicate and/or monitor you in connection with card marketing and administrative purposes; (iv) you shall not assign to any third party any payments due to you under your respective End User Agreement, and further agree that all indebtedness arising from charges will be for bona fide sales of goods and services (or both) at your establishments and free of liens, claims, and encumbrances other than ordinary sales taxes, provided, however, that you may sell and assign future transaction receivables to us, our affiliated entities and/or any other cash advance funding sources who partner with us or our affiliated entities without consent of American Express; (v) American Express is a third-party beneficiary to this Sub-Agreement and retains all rights, but not obligations, in the Sub-Merchant Agreement that will fully provide American Express with the ability to enforce the terms of the Payment Facilitator's Sub-Merchant Agreement against you; (vi) you may opt out of accepting cards at any time without directly or indirectly affecting your rights to accept other payment products; (vii) we may terminate your right to accept cards if you breach any of the provisions in this Section or the American Express Merchant Operating Guide; (viii) we have the right to immediately terminate the Sub-Merchant Agreement for cause, for fraudulent or other activity, or upon American Express' request; (ix) your refund policies for purchases on a card must be at least as favorable as your refund policy for purchases on any other payment products, and you further agree that the refund policy be disclosed to cardmembers at the time of purchase and in compliance with applicable law; (x) you are prohibited against billing or collecting from any cardmember for any purchase or payment on the card unless chargeback has been exercised, you have fully paid for such charge, and you otherwise have the right to do so; (xi) you must comply with applicable laws, rules and regulations relating to the conduct of your business, including the DSR and PCI DSS, each as described in Chapter 15, "Data Security;" (xii) you will report all instances of a data Incident immediately to us after discovery of the incident; (xiii) you will cease all use of, and remove American Express' licensed marks from your website and wherever else they are displayed upon termination of this Sub-Merchant Agreement or your participation in the Program; (xiv) you will ensure data quality and agree that transaction data and customer information will be processed promptly, accurately and completely, and will comply with the American

Express technical specifications; and

(xv) you are solely responsible for being aware of and adhering to privacy and data protection laws and will provide specific and adequate disclosures to cardmembers on the collection, use, and processing of personal data.

15. **PCI DSS.** We have implemented certain technical and procedural safeguards to keep Cardholder Data safe and will continue to comply with Payment Card Industry Data Security Standards (“**PCI DSS**”) as a Level 1 service provider to the extent we store, process or transmit Cardholder Data on your behalf. As a sub-merchant, you also have certain PCI DSS obligations to help keep Cardholder Data safe. Please visit this link to learn more about what you can and should do to protect payment transactions at your place of business. We reserve the right to suspend Payment Services for as long as we deem reasonably necessary to investigate suspicious or unusual activity associated with your account, and we shall have no liability to you for any losses that may be attributable to the period of suspension. Similarly, if you know or have reason to believe there has been a security intrusion that has or may result in unauthorized access to Cardholder Data, you must notify us immediately.
16. **PROCESSING LIMITS.** We reserve the right to assign a maximum dollar amount (“**Processing Limit**”) per sales ticket and an aggregate maximum dollar amount of card and ACH transactions per calendar month to your account. If we assign a Processing Limit, we will communicate it to you in writing.
17. **MERCHANT SERVICES AGREEMENT WITH PROCESSOR.** In the event you process more than \$1,000,000 in Visa transactions and/or \$1,000,000 in MasterCard transactions (or such other amount as provided by the Card Brand’s operating regulations) in any twelve month period (“**Benchmark Amount**”), then in addition to this Sub-Merchant Agreement with us, you may also be required to enter into a “Merchant Services Agreement for Sub-Merchants” with our Processor, the terms of which will be independently enforceable by our Processor.
18. **NEGATIVE ACCRUALS.** We reserve the right to collect a “**Negative Accrual Fee**” if your account goes negative during any given remit cycle. For clarity, we will only assess the Negative Accrual Fee once during a remit cycle period regardless of the number of times your account actually goes negative during that period. A “**Negative Accrual**” occurs where the total liabilities associated with your account exceed the total available funds in the account during a given remit cycle.
19. **ADVANCES.** An advance is any disbursement of funds prior to the regularly scheduled remit date. Any requests for an advance will be considered on a case-by-case basis although, as a general policy, we will not honor advance requests. Any advance request must be sent to us in writing. If an advance is granted, you agree to pay a “**Remit Advance Fee**” for each advance provided.
20. **RECONCILIATIONS; ERROR REPORTING.** 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**”). 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. Errors not reported to us within 60 days from when they first appear on your transaction history or remit report will be deemed waived.

21. **SALES TRANSMITTALS.** You will retain a copy of the sales transmittal for the completed transaction for 25 months or such longer period as the Card Brand operation regulations may require. Within three business days of our request, you will produce copies of sales transmittals and other transaction evidence.
22. **RECURRING TRANSACTIONS.** You will be required to obtain an End User's prior written consent for recurring transactions. In obtaining such consent, End Users should be made aware of the product or service they are purchasing, the frequency of charges, the length of the contract's term, and clear notice about how to properly cancel the recurring charges.
23. **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 into the ACH network ("Entries"). 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. 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.
24. **REFUNDS; RETURNS.** You agree to process returns of and provide refunds and adjustments for products and/or services in accordance with your End User Agreements. In managing refunds and returns, you agree to: (a) maintain a fair return, cancellation or adjustment policy; (b) disclose your return or cancellation policy to End Users at the time of purchase; (c) not give cash refunds to an End User in connection with a card sale unless required by law; and (d) not accept cash or any other item of value for preparing a card sale refund. Your refund policies should be the same for all payment methods and should specifically include a requirement for prompt payment of refunds in order to mitigate chargeback risk.
25. **CHARGEBACK LIABILITY.** For any transaction that results in a chargeback, we may withhold the chargeback amount in a reserve account. You grant us authorization to recover the amount of any chargeback and any associated fees, fines, or penalties listed in the Agreement, your End User Agreements, or assessed by a Card Brand or Processor. If you have pending chargebacks, we may delay payouts as necessary. Further, if we reasonably believe that a chargeback is likely with respect to any transaction, we may withhold the amount of the potential chargeback from remits otherwise due to you until such time that
- (a) the chargeback is assessed due to an End User (cardholder) complaint, in which case we will retain the funds; (b) the period of time under applicable law or regulation by which the End User (cardholder) may dispute that the transaction has expired; or
 - (c) we determine that a chargeback on the transaction will not occur. If we are unable to recover funds related to a chargeback for which you are liable, you agree to pay us the full amount of the chargeback immediately upon demand. You agree to pay actual costs and expenses, incurred by us for the collection of all amounts unpaid by you.
26. **RESERVE; SECURITY INTEREST.** Where deemed necessary or appropriate by us or our sponsor bank, we (or our sponsor bank) shall create a reserve account ("Reserve") in order to protect us or the sponsor bank from actual or potential liabilities under this Sub-Merchant Agreement. The Reserve will be in an amount determined by us in our sole and absolute discretion to cover anticipated chargebacks, returns, unshipped product and/or unfulfilled services or credit risk based on your

processing history. The Reserve may be raised, reduced or removed at any time by us (or at the direction of our sponsor bank). Where the Reserve is not adequately funded, you shall pay all amounts requested by us for the Reserve within one business day of a request for such amounts and we may build the Reserve by offsets from Remits, transaction settlements or by debiting by ACH any of your Designated Accounts with available funds. You hereby grant us a security interest in and lien on any and all funds held in any Reserve, and also authorizes us to make any withdrawals or debits from the Reserve, without prior notice to you, to collect amounts that you owe us under this Sub-Merchant Agreement, including without limitation, for any reversals of deposits or transfers. You will execute any additional documentation required for us to perfect our security interest in any funds in the Reserve. This security interest survives for as long as we hold funds in Reserve; however, it does not apply to any funds for which the grant of a security interest would be prohibited by law. You irrevocably assign to us all rights and legal interests to any interest or other earnings that accrue or are attributable to the Reserve.

27. **RECOUPMENT OF FEES.** Where Fees are owing by you to us under the Agreement, we shall have the right to immediately, without prior consent or notice, offset or debit such amounts from funds: (a) deposited by you into your Designated Account(s); (b) due to you as remits; (c) held in the Reserve; or (d) available in your other payment instrument registered with our sponsor bank (if any). Your failure to pay all Fees owed to us on demand will be a breach of this Sub-Merchant Agreement. You will be liable for our costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and interest at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by applicable law. In our discretion, we may make appropriate reports to credit reporting agencies and law enforcement authorities and cooperate with them in any resulting investigation or prosecution. You hereby expressly agree that all communication in relation to delinquent sub-merchant accounts may be made by us or by a third party acting on our behalf, including but not limited to a collections company.

28. **INTELLECTUAL PROPERTY.** We reserve all rights not expressly granted to you in the Agreement, including without limitation, this Sub-Merchant Agreement. We own the title, copyright and other worldwide intellectual property rights in the Payment Services and all technology, components, systems, and hardware associated therewith. This Sub-Merchant Agreement does not grant you any rights to our trademarks or service marks, nor may you remove, obscure, or alter any of our trademarks or service marks included in the Payment Services. All comments and suggestions of or concerning the Payment Services provided to you shall be our property and you shall not have any rights therein.

The city will, to the extent permitted by law and in accordance with NM Constitution. Article IX sec 12 and not to exceed the total annual price of the contract, will reimburse us for:

29. (a) any actual or alleged breach of your representations, warranties, or obligations set forth in the Sub-Merchant Agreement; (b) your wrongful or improper use of the Payment Services; (c) any transaction submitted by you through the Payment Services (including without limitation the accuracy of any product information or service that you provide or any claim or dispute arising out of products or services offered or sold by you); (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (e) your violation of any applicable law; or (f) any other party's access and/or use of the Payment Services with your access credentials.

30. **NO WARRANTIES.** THE PAYMENT SERVICES ARE PROVIDED ON AN AS IS

AND AS AVAILABLE BASIS. USE OF THE PAYMENT SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PAYMENT SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

31. **CONFIDENTIALITY.** Unless otherwise required by law, you shall, and shall cause your affiliates to, hold in strict confidence at all times following the date hereof all of our, our bank's or our Processor's Confidential Information, and neither you nor any of your affiliates shall use such Confidential Information for any purpose other than for the performance of your duties and obligations hereunder. If you breach, or threaten to breach, any of the provisions of this section, in addition to any other rights we may have, including a claim for damages, we shall have the right to have the provisions of this section specifically enforced, and your breach or threatened breach enjoined, by any court of competent jurisdiction, without presentment of a bond (such requirement being expressly waived by you), it being agreed that any breach or threatened breach of this section would cause irreparable harm to us in that money damages would not provide an adequate remedy.

EXHIBIT C

PRIVACY POLICY

We take data privacy seriously. This privacy policy explains who we are, how we collect, share and use Personal Information, and how you can exercise your privacy rights. We recommend that you read this privacy policy in full to ensure you are fully informed. However, to make it easier for you to review the parts of this privacy policy that apply to you, we have divided up the document into sections that are specifically applicable to Customers (Section 2), Patrons (Section 3) and Visitors (Section 4). Sections 1 and 5 apply to everyone. To the extent we provide you with notice of different or additional privacy policies, those policies will govern such interactions with our products and services.

1. THE BASICS

A. **About VS.** RecTrac, LLC d/b/a Vermont Systems (“VS,” “we,” “us,” or “our”) is a technology company that develops, maintains and sells a proprietary club-management software and payments solution, and other related services, for business owners operating primarily in the parks and recreation space. VS’s corporate office is located at 12 Market Place, Essex Junction, VT 05452.

B. **Key Terms.** In this privacy policy, these terms have the following meanings:
“Customer” is a VS customer. The Customer is the individual, business entity, non-profit, military branch, or municipality contracting with us to receive Services as more specifically identified in the Services Agreement.
“End Users” are a Customer’s authorized and licensed users of the Software, as described in the Order Schedule.

“Patron(s)” mean(s) the individuals who purchase a Customer’s products and/or services and who otherwise interact with the Software. Patrons are our Customer’s customers, clients, members or military service members.

“Personal Information” means any information that identifies or can be used to identify an individual directly or indirectly. Examples of Personal Information include, but are not limited to, first and last name, date of birth, email address, gender, occupation, demographic information, financial data and transaction history.

“Services” mean any and all of those products and/or services offered by us to you under the Agreement. Services may include products or services related to software, hosting, hardware, support and/or payments.

“Software” means our proprietary technology software and any associated module(s), website(s), third-party integration(s), and mobile application(s) (if applicable).

“Site” means our public-facing website, www.vermontsystems.com, or websites that link to www.vermontsystems.com.

“Visitor” means, depending on the context, any person who visits the Site, our offices, or otherwise engages with us at our events or in connection with our marketing or recruitment activities.

“You” and “your” means, depending on the context, either a Customer, Patron or a Visitor.

C. **Scope of this Privacy Policy.** This privacy policy describes our practices and your rights in connection with the Personal Information that we may collect, use or disclose as related to:

- our Services;
- our Software;
- the Site;
- our social media pages;
- any other products or services offered, or emails sent, that direct you to this privacy policy.

By accessing or using any of the VS products or services described above (collectively, “VS Services,” unless referred to individually), you agree to the terms and conditions of this privacy policy.

2. PRIVACY FOR CUSTOMERS

This section applies to the Personal Information we collect and process from Customers (or potential Customers) through the VS Services. If you are not a Customer, the Patron or Visitor section of this policy may be more applicable to you and your data. In this section, “you” and “your” will refer to Customers (and potential Customers), including their End Users.

A. Information We Collect. The Personal Information that we collect depends on the context of your interactions with the VS Services, the settings associated with your Customer or End User account, the products, services and features that you use, your location, and applicable law. However, the Personal Information we collect broadly falls into the following categories:

i. Information you provide to us. You may provide certain Personal Information to us when you set up your Customer or End User account, access VS Services, consult with our customer service team, send us an email, integrate any of the VS Services with a third-party service or your website, or communicate with us in any other way. This information may include:

- Business contact information (such as name, job title, legal entity, trade name, organizational information, phone number, email address, and country);
- Marketing information (such as your contact preferences);
- Site set-up (such as account logins, email addresses, usernames and passwords);
- Customer Data (which includes any information associated with your Customer site(s) and Customer Data like photos, rosters and Patron Data).
- Troubleshooting and support data (which is data you provide or we otherwise collect in connection with support inquiries we receive from you);
- Payment information (including banking information for remit purposes, account and routing numbers, credit card numbers and associated identifiers, and billing address); and
- Tax information (including your EIN or tax identification number).

ii. Information we collect automatically. When you use the VS Services, we may automatically collect or receive certain information about your device or usage (“Service Usage Data”). In some (but not all) countries, including countries in the European Economic Area (“EEA”), this information is considered Personal Information under applicable data protection laws. We use cookies and other tracking technologies to collect some of this information. For further information, please review our Cookies Policy available [here](#).

Service Usage Data may include:

- **Device Information.** We collect information about the device and applications you use to access the Software, such as your IP address, your operating system, your browser ID, and other information about your system and connection. If you are using a VS mobile application (to the extent that we offer such a product), we may also collect information about the cellular network associated with your mobile device, your mobile device’s operating system or platform, the type of mobile device you use, your mobile device’s name and unique device ID, and information about the features of our mobile application that you accessed.
- **Log Data.** Our web servers keep log files that record data each time a device accesses those servers and the nature of each access, including originating IP addresses and your activity in the VS Services (such as the date/time stamps associated with your usage, pages and files viewed, searches and other actions you take), device event information (such as system activity and error reports), and hardware settings. We may also access metadata and other information associated with files that you upload into the Software.
- **Usage Data.** We collect usage data about you whenever you interact with the VS Services, which may include the dates and times you accessed the VS Services or your browsing activity on the Site. We also collect information about the performance of the VS Services, including metrics related to Software uptime, usage of our APIs, or the deliverability of emails. If you are using a VS mobile application (to the extent that we offer such a product), we may collect information about

how often you use the mobile application and other performance data. This information allows us to improve the operation of the VS Services and facilitate research and analysis of the VS Services.

iii. Information we collect from other sources. From time to time, we may obtain information about you from third-party sources, such as credit reporting agencies, public databases, social media platforms, marketing partners, and/or third-party data providers. Examples of the information we receive from other sources may include credit histories, demographic information (such as age and gender), device information (such as IP addresses), location data (such as city and state), and online behavioral data (such as information about your use of social media websites, page view information and search results and links). We may use this information, alone or in combination with other Personal Information we collect, to assess the credit risk associated with opening a merchant or sub-merchant account for you, to enhance our ability to provide relevant marketing or content to you, to better provide you with VS Services, and to develop and provide you with more relevant products, features, and services.

B. Use of Personal Information. We may use the Personal Information we collect or receive through the VS Services (alone or in combination with other data we source) for the purposes and on the legal bases identified below:

- To create, administer and assign permissions to your Customer and/or End User account(s) and provide you with related assistance.
- To bill and collect money owed to us by you under the terms of our Agreement with you.
- To perform our obligations under the Agreement with you for the use of any or all of the VS Services; or, where we have not entered into a contract with you, in accordance with our legitimate interests to operate and administer the VS Services. For example, we may create and administer your Customer and/or End User account(s), fulfill and record payment transactions, and provide you with related assistance.
- To send you VS Services alerts in reliance on our legitimate interests in administering the VS Services and providing certain features and functionalities. For example, we may inform you about temporary or permanent changes to the VS Services, send you scheduled maintenance updates, or send you account, security or compliance notifications, such as new features or functionalities, version updates, releases, abuse warnings, and changes to this privacy policy.
- To communicate with you about your site(s), Customer and/or End User account(s), and/or permit customer support to provide you with related support services.
- To enforce compliance with our Terms of Service, the Agreement, other posted VS policies, and applicable law, and to protect the rights and safety of our other Customers in reliance on our legitimate interest to protect against misuse or abuse of the VS Services and, as needed, to pursue available remedies.
- To meet legal requirements, including complying with court orders, valid discovery requests, valid subpoenas, garnishments or tax liens, and other appropriate legal mechanisms.
- To provide information to representatives and advisors, including attorneys and accountants, to help us comply with legal, accounting, and security requirements in reliance on our legitimate interests.
- To prosecute and defend a court, arbitration or similar proceeding.
- To respond to lawful requests by public authorities, including to meet national security or law enforcement requirements.
- To provide, support and improve the VS Services to perform our Agreement with you for the use of VS Services; or, where we have not entered into a contract with you, in reliance on our legitimate interests in administering and improving the VS Services and providing certain features and functionalities. This may include sharing your information with third parties in order to provide and support our VS Services or to make certain features or functionalities of the Software available to you. When we share your Personal Information with third parties, we take steps to protect your information in a manner that is consistent with our obligations under applicable

privacy laws. For further information about how we share your information, please refer to Section 5 below.

- To run data analytics or reports in reliance on our legitimate business interests in improving and enhancing our VS Services. For example, we may run a data analytics to better understand Customer, End User and/or Patron use of our VS Services, or to better understand general trends and statistics about the parks and recreation industry or a particular market segment.
- To facilitate social sharing functionality if you consent to such activities.
- To allow you to participate in sweepstakes, contests or similar promotions if you consent to such activities.
- To share information with other marketers (and their service providers) to permit them to send you marketing communications consistent with your choices.
- To send you VS marketing materials that we believe may be of interest to you if you consent to such activities.

C. Third-Party Integrations. We may use the Personal Information we collect or receive through the VS Services, as a data processor or as otherwise stated in this privacy policy, to enable your use of the integrations and plugins you choose to connect to your Customer and/or End User account(s).

D. Cookies and Tracking Technologies. We and our third-party partners may use various technologies to collect and store Service Usage Data when you use the VS Services (as discussed above), and this may include using cookies and similar tracking technologies, such as pixels and web beacons. For example, we use web beacons in the emails you send, which enable us to track certain behavior, such as whether the email sent through the VS Services was delivered and opened and whether links within the email were clicked. The use of web beacons allow us to collect information such as the recipient's IP address, browser, email client type and other similar data as further described above details. We use this information to measure the performance of your email campaigns, to provide analytics information, enhance the effectiveness of the VS Services, and for other purposes described above.

E. Your Data Protection Rights. Depending on the country in which you reside, you may have the following data protection rights:

- To access; correct; update; port; delete; restrict; or object to our processing of your Personal Information.
- You can manage your Customer and/or End User account(s) directly from the VS support portal, or you may contact us directly to seek help with managing such account(s) by emailing us at support@vermontsystems.com. You can also manage information about your Patrons directly from your Customer account(s) to be able to do things like access, correct, update, port or delete information that you receive from your Patrons. Note, if any of your Patrons wish to exercise any of these rights, they should contact you directly. You can also contact us at any time to update your marketing preferences (*see* Section 5. General Information, C. Your Choices and Opt-Outs below). We take reasonable steps to ensure that the data we collect is reliable for its intended use, accurate, complete and up to date.
- The right to complain to a data protection authority about the collection and use of Personal Information. For more information, please contact your local data protection authority. Contact details for data protection authorities in the EEA and UK are available [here](#).
- Similarly, if Personal Information is collected or processed on the basis of consent, you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal, nor will it affect the processing of your Personal Information conducted in reliance on lawful processing grounds other than consent. If we receive a request from one of your Patrons, we will either direct the Patron to reach out to you, or, if appropriate, we may (but shall not be required to) respond directly to their request.

3. PRIVACY FOR PATRONS

This section applies to the information we process about our Customers' Patrons, the Customer being the controller of such data (as a "data controller") and VS being the processor of such data (as a "data processor"). The Software and our related Services are intended for use by paid Customers and their lawful Patrons. As a result, for much of the Personal Information we collect and process about Patrons through the VS Services, we act as a processor of such information on our Customers' behalf. We are not responsible for the privacy or

security practices of our Customers (including their End Users), nor the third parties which Customers may use or contract with for other services provided to them, which may differ from those set forth in this privacy policy. Please check with the Customer with whom you have a business relationship about the privacy policy or policies it may have in place. For purposes of this section, "you" and "your" refer to Patrons.

A. **Information We Collect.** The Personal Information that we may collect or receive about you broadly falls into the following categories:

i. **Information we receive about Patrons from our Customers.** A Customer may provide Personal Information about you to us through the VS Services. When you sign up for a Patron account using the Software, your Personal Information, including your name, email address, address, telephone number and certain payment information, becomes associated with our Customer's account(s) and the particular location within that Customer account where you are a customer, client or member of the Customer. You can update your Personal Information directly from your Patron account.

ii. **Information we collect automatically.** When you interact with a marketing campaign that you receive from a Customer or access your Patron account through the Software, we may collect information about your device and your interaction with the marketing email, SMS or the Software. We use cookies and other tracking technologies to collect some of this information. Our use of cookies and other tracking technologies is discussed more below and in more detail in our Cookies Policy available here.

- **Device Information.** We collect information about the device and applications you use to access emails sent through the VS Services, such as your IP address, your operating system, your browser ID, and other information about your system and connection.
- **Usage Data.** It is important to us to ensure the security and reliability of the VS Services that we provide. Therefore, we also collect usage data about your interactions with the VS Services, which may include dates and times you access the Software and your browsing activity on the Site. This information allows us to ensure compliance with our Terms of Service and API Terms of Use, to monitor and prevent service abuse, and to ensure we attain certain usage standards and metrics in relation to the VS Services. We also collect information regarding the performance of the VS Services, including metrics related to Software uptime, periods of slowness, or the deliverability of emails that our Customers may send through the Software. This information allows us to improve the content and operation of the VS Services and facilitate research and perform analysis into the use and performance of the VS Services.

iii. **Information we collect from other sources.** From time to time, we may obtain information about you from third-party sources, such as social media platforms and third-party data providers. For example, if you choose to connect your social media account to your Patron account, certain information from your social media account may be shared with us, including information that's part of your or your friend's profiles. We may also collect Personal Information through the VS Services at the direction of our Customers.

B. **Use of Personal Information.** We may use the Personal Information we collect or receive about you in reliance on our (and where applicable, our Customers') legitimate interests for the following purposes:

- To enforce compliance with our Terms of Service and applicable law. This may include utilizing usage data and developing tools and algorithms that help us prevent violations.
- To protect the rights and safety of Customers, third parties and VS.
- To meet legal requirements, including complying with court orders, valid discovery requests, valid subpoenas, and other appropriate legal mechanisms.
- To provide information to representatives and advisors, including attorneys and accountants, to help us comply with legal, accounting, and security requirements in reliance on our legitimate interests.
- To prosecute and defend a court, arbitration or similar proceeding.
- To respond to lawful requests by public authorities, including to meet national security or law enforcement requirements.
- To provide, support and improve the VS Services. For example, this may include sharing your information with third parties in order to provide and support our VS Services or to make certain features or functionalities of the Software available to you. When we share your Personal Information with third parties, we take steps to protect your information in a manner that is consistent with our obligations under applicable privacy laws. For further information about how we share your information, refer to Section 5 below.
- To run data analytics or reports. Our data analytics or reporting projects use data from our Customers' accounts, including Personal Information belonging to Patrons, to provide and improve the VS Services. We use information, like your transactions history or bookings records, for example, so we can make more informed predictions, decisions, and products for our Customers. If you prefer your data not be used in this manner, you can opt out of data analytics and reporting projects at any time by emailing us at privacy@vermontsystems.com with the subject heading titled "*Opt Out from Data Analytics and Reporting Projects.*"
- To carry out other business purposes. To carry out other legitimate business purposes, as well as other lawful purposes about which we will notify you.

C. Cookies and Tracking Technologies. We and our third-party partners may use various technologies to collect and store Service Usage Data when you use the VS Services (as discussed above), and this may include using cookies and similar tracking technologies, such as pixels and web beacons. For example, we use web beacons in the emails sent by our Customers, which enable us to track certain behavior, such as whether the email sent through the Software was delivered and opened and whether links within the email were clicked. The use of web beacons allow us to collect information such as the recipient's IP address, browser, email client type and other similar data as further described above details. We use this information to measure the performance of your email campaigns, to provide analytics information, enhance the effectiveness of the VS Services, and for other purposes described above.

D. Your Data Protection Rights. Depending on the country in which you reside, you may have the following data protection rights:

- To access; correct; update; port; delete; restrict or object to our processing of your Personal Information.
- You also have the right to complain to a data protection authority about our collection and use of your Personal Information. For more information, please contact your local data protection authority. Contact details for a data protection authority in the EEA are available [here](#).

As described above, for much of the Personal Information we collect and process about Patrons through the VS Services, we act as a processor on behalf of our Customers. In such cases, if you are a Patron and want to exercise any data protection rights that may be available to you under applicable law or have questions or concerns about how your Personal Information is handled by us as a processor on behalf of our individual Customers, you should contact the relevant Customer that is using the VS Services, and refer to their separate privacy policy.

If you no longer want to be contacted by one of our Customers through the VS Services, please contact the Customer directly to update or delete your data. If you contact us directly, we may either forward your request to the relevant Customer or provide you with the identity of the Customer to enable you to contact them directly.

We respond to all requests we receive from individuals wishing to exercise their data protection rights in accordance with applicable data protection laws. We may ask you to verify your identity in order to help us respond efficiently to your request.

4. PRIVACY FOR VISITORS

This section applies to Personal Information that we collect and process when you visit the Site, and in the usual course of our business, such as in connection with our recruitment, events, sales and marketing activities or when you visit our offices. In this section, “you” and “your” will refer to Visitors.

A. Information we collect

i. **Information you provide to us on the Site or otherwise.** Our Site offers various ways to contact us, such as through form submission, email or phone, to inquire about our company, our products and our services. For example, we may ask you to provide certain Personal Information when you express an interest in obtaining information about us or the VS Services, take part in surveys, subscribe to marketing, apply for a role with VS, or otherwise contact us. We may also collect Personal Information from you in person when you attend our events or trade shows, if you visit one of our offices, or via a phone call with one of our sales representatives. You may choose to provide additional information when you communicate with us or otherwise interact with us, and we may keep copies of any such communications for our records.

The Personal Information we collect may include:

- **Business contact information** (such as your name, phone number, email address, address and country);
- **Professional information** (such as your job title and company);
 - **Nature of your communication;**
- **Marketing information** (such as your contact preferences); and
- **Any other information you choose to provide us** when completing any ‘free text’ boxes in our forms.

ii. **Information we collect automatically through the Site.** When you visit our Site or interact with our emails, we use cookies and similar technologies such as pixels or web beacons, alone or in conjunction with cookies, to collect certain information automatically from your browser or device. In some countries, including countries in the EEA, this information may be considered Personal Information under applicable data protection laws. Our use of cookies and other tracking technologies is discussed more below, and in more detail in our Cookie Policy available [here](#).

The information we collect automatically includes:

- **Device information** such as your IP address, your browser, device information, unique device identifiers, mobile network information, request information (speed, frequency, the site from which you linked to us (“referring page”), the name of the website you choose to visit immediately after ours (called “exit page”), information about other websites you have recently visited and the web browser you used.
- **Usage data** such as information about how you interact with our emails, Site, and other websites (such as the pages and files viewed, searches, operating system and system configuration information and date/time stamps associated with your usage).

B. Use of Personal Information. We may use information we collect through our Site and in connection with our events and marketing activities (alone or in combination with other data we collect) for a range of reasons in reliance on our legitimate interests, including:

- To provide, operate, optimize and maintain the Site;
 - To send you marketing information, product recommendations and non-transactional communications (for example, marketing newsletters, telemarketing calls, SMS, or push notifications) about us, in accordance with your marketing preferences, including information about our products, services, promotions or events as necessary for our legitimate interest in conducting direct marketing or to the extent you have provided your prior consent.
 - For recruitment purposes if you have applied for a role with VS.
 - To respond to your online inquiries and requests, and to provide you with information and access to resources or services that you have requested from us.
 - To manage the Site, including its proper administration and security.
 - To manage event registrations and attendance, including sending related communications to you.
 - To register visitors to our offices for security reasons and to manage non-disclosure agreements that visitors may be required to sign.
 - To improve the navigation and content of the Site.
 - To identify any server problems or other IT or network issues.
-
- To compile aggregated statistics about site usage and to better understand the preferences of our Visitors.
 - To help us provide, improve and personalize our marketing activities.
 - To carry out research and development to improve the VS Services.
 - To conduct marketing research, advertise to you, provide personalized information about us on and off our Site, and to provide other personalized content based on your activities and interests to the extent necessary for our legitimate interests in supporting our marketing activities or advertising our VS Services or instances where we seek your consent.
 - To carry out other legitimate business purposes, as well as other lawful purposes, such as data analysis, fraud monitoring and prevention, identifying usage trends and expanding our business activities in reliance on our legitimate interests.
 - To cooperate with public and government authorities, courts or regulators in accordance with our legal obligations under applicable laws to the extent this requires the processing or disclosure of Personal Information to protect our rights or is necessary for our legitimate interest in protecting against misuse or abuse of our Site and/or VS Services, protecting personal property or safety, pursuing remedies available to us and limiting our damages, complying with judicial proceedings, court orders or legal processes, or responding to lawful requests.

C. Public Information and Third-Party Websites

- **Social media platforms and widgets.** The Site includes social media features, such as the Facebook Like button. These features may collect information about your IP address and which page you are visiting on our Site, and they may set a cookie to make sure the feature functions properly. Social media features and widgets are either hosted by a third party or hosted directly on our Site. We also maintain presences on social media platforms, including Facebook, Twitter, and Instagram. Any information, communications, or materials you submit to us via a social media platform is done at your own risk without any expectation of privacy. We cannot control the actions of other users of these platforms or the actions of the platforms themselves. Your interactions with those features and platforms are governed by the privacy policies of the companies that provide them.
- **Links to third-party websites.** The Site includes links to other websites, whose privacy practices may be different from ours. If you submit Personal Information to any of those sites, your

information is governed by their privacy policies. We encourage you to carefully read the privacy policy of any website you visit.

- **Contests and sweepstakes.** We may, from time to time, offer surveys, contests, sweepstakes, or other promotions on the Site or through social media (collectively, "Promotions"). Participation in our Promotions is completely voluntary. Information requested for entry may include Personal Information such as your name, address, date of birth, phone number, email address, username, and similar details. We use the information you provide to administer our Promotions. We may also, unless prohibited by the Promotion's rules or law, use the information provided to communicate with you, or other people you select, about the VS Services. We may share this information with our affiliates and other organizations or service providers in line with this privacy policy and the rules posted for our Promotions.

D. **Cookies and Tracking Technologies.** We use cookies and similar tracking technologies to collect and use Personal Information about you, including to serve interest-based advertising. For further information about the types of cookies and tracking technologies we use, why, and how you can control them, please see our Cookies Policy available [here](#).

E. **Other Data Protection Rights.** Depending on the country in which you reside, you may have the following data protection rights:

- To access; correct; update; port; delete; restrict or object to our processing of your Personal Information. You can exercise these rights by emailing support@vermontsystems.com.
- You may also have the right to complain to a data protection authority about our collection and use of your Personal Information. For more information, please contact your local data protection authority. Contact details for data protection authorities in the EEA are available [here](#).
- Similarly, if we have collected and processed your Personal Information with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal, nor will it affect the processing of your Personal Information conducted in reliance on lawful processing grounds other than consent. You can also contact us at any time to update your marketing preferences (see Section 5. General Information, C. Your Choices and Opt-Outs below).

We respond to all requests we receive from individuals wishing to exercise their data protection rights in accordance with applicable data protection laws. We may ask you to verify your identity in order to help us respond efficiently to your request.

5. GENERAL INFORMATION

A. **How We Share Information.** We may share and disclose your Personal Information to the following types of third parties for the purposes described in this privacy policy. For purposes of this section, "you" and "your" refer to Customers, Patrons and Visitors unless otherwise indicated.

i. **Our service providers.** Sometimes, we share your information with our third-party service providers working on our behalf for the purposes described in this privacy policy. For example, companies we have hired to help us provide and support our VS Services, including the processing of payments, or assist in protecting and securing our systems and services and other business-related functions. The following is a non-exclusive list of third-party service providers that may process your Personal Information in their capacity as a sub-processor of ours. Please review the relevant privacy policies (links are current as of the date of publication of this privacy policy) for further information about how each third-party handles your Personal Information.

Third Party Name	Privacy Policy Link
Worldpay, LLC	https://online.worldpay.com/terms/privacy
Elavon, Inc.	https://www.elavon.com/privacy-policy.html
CardConnect	https://cardconnect.com/privacy-policy
PlugNPlay	http://www.plugnpay.com/privacy-policy/
VeriFone	https://www.verifone.com/privacy

ii. **Any competent law enforcement body, regulatory body, government agency, court or other third party** where we believe disclosure is necessary (a) as a matter of applicable law or regulation; (b) to exercise, establish, or defend our legal rights; or (c) to protect your vital interests or those of any other person.

iii. **A potential buyer (and its agents and advisors)** in the case of a sale, merger, consolidation, liquidation, reorganization, or acquisition. In that event, any acquirer will be subject to our obligations under this privacy policy, including your rights to access and choice. We will notify you of the change by sending you an email or posting a notice on our Site.

iv. **Any other person with your consent.**

NOTE: We do not sell your Personal Information to any third party for promotional or marketing purposes.

B. Legal Basis for Processing Personal Information (EEA and UK Persons Only). If you are located in the EEA or UK, our legal basis for collecting and using the Personal Information described above will depend on the Personal Information concerned and the specific context in which we collect it.

However, we will normally collect and use Personal Information from you where the processing is in our legitimate interests and not overridden by your data-protection interests or fundamental rights and freedoms. Our legitimate interests are described in more detail in this privacy policy in the sections above titled "Use of Personal Information," but they typically include improving, maintaining, providing, and enhancing our technology, products, and services; ensuring the security of the VS Services and our Site; and supporting our marketing activities.

If you are a Customer, we may need the Personal Information to perform our Agreement with you. In some limited cases, we may also have a legal obligation to collect Personal Information from you. If we ask you to provide Personal Information to comply with a legal requirement or to perform a contract with you, we will make this clear at the relevant time and advise you whether the provision of your Personal Information is mandatory or not, as well as of the possible consequences if you do not provide your Personal Information. Where required by law, we will collect Personal Information only where we have your consent to do so. If you have questions or need further information concerning the legal basis on which we collect and use your Personal Information, please contact us at support@vermontsystems.com.

C. Your Choices and Opt-Outs

i. **Customer Account(s); Customer Site.** In order to keep your Personal Information accurate and complete, you can log in to review and update your account information, including contact and billing information, via your Customer and/or End User account(s), as applicable. If you are a Customer and would like to change the way we communicate with you, including a change in your primary point of contact (whether for billing purposes or otherwise), please send us the request at accountsreceivable@vermontsystems.com.

ii. **Email.** If you do not wish to receive emails sent through the Software, you may opt out at any time by following the opt-out or unsubscribe link contained at the bottom of the email itself. Please note that it may take up to ten (10) days to process your request. Please note that if you opt-out from receiving

promotional or marketing emails, you may continue to receive emails with information related to your account or our Services. If you do not wish to receive any service-related emails from us, you have the option of deactivating your account.

iii. **SMS (Text Messages).** In order to send text messages through the Software, Customers must enable this functionality in their site settings. Once enabled, an individual Patron can control his or her “text messaging address” by entering a phone directly from the Patron’s account profile and saving the information. Patron’s must verify opt-in consent by entering and confirming a confirmation code sent to the mobile device listed. To revoke consent to receiving text messages, please notify the Customer or remove the mobile number from the “text messaging address” field in the Patron’s account profile.

iv. **Cookies.** You may also refrain from providing, or withdraw, your consent for cookies. Your browser’s help function should contain instructions on how to set your computer to accept all cookies, to notify you when a cookie is issued; or to not receive cookies at any time.

v. **Third Party Analytics Services.** We use Google Analytics in conjunction with our Services. Google Analytics is provided by Google, Inc. You can opt-out from Google Analytics service from using your information by installing the Google Analytics Opt-out Browser tool: tools.google.com/dlpage/gaoptout. For more information on the privacy practices of Google, please visit the Google Privacy & Terms web page [here](#).

D. Our Security. We take appropriate and reasonable technical and organizational measures designed to protect Personal Information from loss, misuse, unauthorized access, disclosure, alteration, and destruction, taking into account the risks involved in the processing and the nature of the Personal Information. Unfortunately, even with these safeguards, no data transmission or storage system can be guaranteed to be 100% secure. If you have any questions about the security of your Personal Information, you may contact us at support@vermontsystems.com.

Customer and/or End User account(s) require a username and password to login. Customer and End Users must keep their username and password secure, and never disclose it to a third party. Permissions assigned by Customers to authorized staff members (i.e., End Users) should be closely guarded, periodically updated, some level of internal training provided about the security of login credentials. Because the information in a Customer’s account is private, account passwords are hashed, which means we cannot see a Customer’s and/or End User’s password. We cannot resend forgotten passwords either. We will only provide Customer and/or End User with instructions on how to reset them.

E. International Transfers

i. **We operate in the United States.** Our servers and offices are located in the United States, so your information may be transferred to, stored, or processed in the United States. While the data protection, privacy, and other laws of the United States might not be as comprehensive as those in your country, we take many steps to protect your privacy.

ii. **Customers, Patrons and Visitors located in Australia.** If you are a Customer, Patron or Visitor who accesses VS Services in Australia, this section applies to you. Here are the specific points under the Privacy Act 1988 (“Australian Privacy Act”) you should be aware of:

- As stated in the Prohibited Use section of our Terms of Service, information considered to be harassing, discriminatory, defamatory, vulgar, pornographic or harmful to others is not permitted on the VS Services and Customers, End User and Patrons are prohibited from loading any such Personal Information to their account(s).
- Please note that if you do not provide us with your Personal Information or if you withdraw your consent for us to collect, use and disclose your Personal Information, we may be unable to provide the VS Services to you.

- Where we collect Personal Information of our Visitors, the Personal Information we ask you to provide will be information that is reasonably necessary for, or directly related to, one or more of our functions or activities. Please see Section 4 of this privacy policy for examples of the types of Personal Information we may ask Visitors to provide.
- Where we say we assume an obligation about Personal Information, we will also require our integration partners and subcontractors to undertake a similar obligation.
- We will not use or disclose Personal Information for the purpose of our direct marketing to you unless you have consented to receive direct marketing; you would reasonably expect us to use your personal details for marketing; or we believe you may be interested in the material but it is impractical for us to obtain your consent.

You may opt out of any marketing materials we send to you through an unsubscribe mechanism. If you have requested not to receive further direct marketing messages, we may continue to provide you with messages that are not regarded as "direct marketing" under the Australian Privacy Act, including changes to our terms, system alerts, and other information related to your account as permitted under the Australian Privacy Act and the Spam Act 2003 (Cth).

- Our servers are located in the United States. In addition, we or our sub-processors may use cloud technology to store or process Personal Information, which may result in storage of data outside Australia. It is not practicable for us to specify in advance which country will have jurisdiction over this type of offshore activity. All of our subcontractors, however, are required to comply with the Australian Privacy Act in relation to the transfer or storage of Personal Information overseas.

- You may access the Personal Information we hold about you. If you wish to access your Personal Information, please contact us directly by emailing us at support@vermontsystems.com. We will respond to all requests for access within a reasonable time.

If you think the information we hold about you is inaccurate, out of date, incomplete, irrelevant, or misleading, we will take reasonable steps, consistent with our obligations under the Australian Privacy Act, to correct that information upon your request. If you find that the information we have is not up to date or is inaccurate or incomplete, please contact us in writing at support@vermontsystems.com so we can update our records. We will respond to all requests for correction within a reasonable time. If you are unsatisfied with our response to a privacy matter, you may consult either an independent advisor or contact the Office of the Australian Information Commissioner for additional help. We will provide our full cooperation if you pursue this course of action.

F. Retention of Data. We retain Personal Information where we have an ongoing legitimate business or legal need to do so. Our retention periods will vary depending on the type of data involved, but, generally, we will refer to these criteria in order to determine retention periods:

- Whether we have a legal or contractual need to retain the data.
- Whether the data is necessary to provide the VS Services.
- Whether our Customers have the ability to access and delete the data on their own.
- Whether our Customers would reasonably expect that we could retain the data until they remove it or until their account is closed or has been terminated.

G. California Privacy. The California Consumer Privacy Act ("CCPA") provides consumers with specific rights regarding their Personal Information. You have the right to request that businesses subject to the CCPA (which may include our Customer with whom you have a relationship) disclose certain information to you about their collection and use of your Personal Information over the past 12 months. In addition, you have the right to ask such businesses to delete Personal Information collected from you, subject to certain exceptions. If

the business sells Personal Information, you have a right to opt-out of that sale. Finally, a business cannot discriminate against you for exercising a CCPA right. When offering services to Customers, we act as a “service provider” under the CCPA and our receipt and collection of any consumer Personal Information is completed on behalf of our Customers in order for us to provide the VS Services. Please direct any requests for access or deletion of your Personal Information under the CCPA to the Customer with whom you have a direct relationship. VS, for its part, does not sell any of your Personal Information to any third party for promotional or marketing purposes. Consistent with California law, if you choose to exercise your applicable CCPA rights, we will not charge you different prices or provide you a different quality of services. If we ever offer a financial incentive or product enhancement that is contingent upon you providing your Personal Information, we will not do so unless the benefits to you are reasonably related to the value of the Personal Information that you provide to us.

H. Use by Minors. The VS Services are not directed or targeted at children under the age of thirteen (13). We request that minors do not provide Personal Information through the VS Services; instead, any such information on a minor should be submitted to us by the minor’s authorized parent or legal guardian.

I. Do Not Track. Certain state laws require us to indicate whether we honor “Do Not Track” settings in your browser. We adhere to the standards set out in this privacy policy and do not monitor or follow any Do Not Track browser requests.

J. Changes to this Privacy Policy. We may change this privacy policy at any time and from time to time. The most recent version of the privacy policy is reflected by the version date located at the top of this privacy policy. All updates and amendments are effective immediately upon notice, which we may give by any means, including, but not limited to, by posting a revised version of this privacy policy or other notice on the Site. We encourage you to review this privacy policy often to stay informed of changes that may affect you. Our electronically or otherwise properly stored copies of this privacy policy are each deemed to be the true, complete, valid, authentic, and enforceable copy of the version of this privacy policy that was in effect on each respective date you visited the Site.

K. Questions & Concerns. If you have any questions or comments, or if you have a concern about the way in which we have handled any privacy matter, please contact us at support@vermontsystems.com.

You may also contact us by postal mail at:
 RecTrac, LLC d/b/a Vermont Systems Attn:
 Privacy 12 Market Place
 Essex Junction, VT 05452



II. SCHEDULE A:

PAYTRAC PAYMENT SERVICE RATES & FEES*

TRANSACTION PARTIES		FUNDING**
Customer / Sub-Merchant:	City of Santa Fe	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><i>* 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.</i></p> <p><i>** VS is not responsible for funding delays due to weekends, federal holidays or Force Majeure events or incidents.</i></p> <p><i>*** Daily settlement cut-off times are 7:30pm ET for E-commerce and 9:00pm ET for Card Present MIDS.</i></p>		

FLAT RATE MODEL

CREDIT CARD PROCESSING FEES				
Mastercard Visa Discover	Per electronic authorization	\$	0.25	
	Per electronic authorization reversal (void)	\$	0.25	
	Per sale transaction	\$	0.25	
	Per refund transaction	\$	0.25	
	Per credit card decline	\$	0.25	
	Credit card account updater fee If & when available and option selected/elected	\$	1.00	
	Per chargeback request or return processed	\$	25.00	
	Mastercard-Visa-Discover acquired gross purchase sale %		2.65	%
American Express	Per AMEX sale transaction (AMEX Direct)	\$	NA	
	Per AMEX refund transaction (AMEX Direct)	\$	NA	
	Credit card account updater fee If & when available and option selected/elected	\$	NA	
	Per chargeback request or return processed	\$	NA	
	Per AMEX acquired settled transaction (Opt Blue)*	\$	NA	
	AMEX acquired gross purchase sale % (Opt Blue)		NA	%



* 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:



City of Santa Fe, New Mexico



SOLE SOURCE REQUEST AND DETERMINATION FORM

This sole source request form **must** be submitted to the City of Santa Fe, Purchasing Division for authorization, determination, and processing by the Chief Procurement Officer (CPO).

Please ensure to complete this form in its entirety - () must be completed.*

*Date 07/17/2023

*Prepared By Jaclyn Henley

*Title ITT Project Manager

*Vendor Name Vermont Systems

*Address: 12 Market Place

*City: Essex Junction

*State: Vermont

*Zip Code: 05452

*Description of Goods/Service to be procured: Recreation Center Management Software

*Estimated Cost: \$141,757 + Tax

Term of Contract:
(One (1) year from award) One (1) Year Term

*Sole Source Request Justification Questions 1-3.

1. Explain the purpose/need of purchase. Ensure to include a thorough scope of work for the services, construction, or items of tangible personal property (if this is an amendment request to an existing contract, attach current contract).

Scope of Work

The Contractor shall perform the following work: Work is to be performed in accordance with Exhibit A. Quote: 23593405. Deliverables stated for Vermont Systems Enterprise Software Solutions. Vermont Systems shall provide RecTrac 3.1 Recreation Tracking Software, their customer reservation and in-house cashiering Enterprise software solution, 148hrs discovery and training, 16hrs Golf and Tee times set up and training, Web Trac set up, 20 Star CD3 Cash Drawer Dumb, 18 Honeywell Genesis Barcode Scanner, 16 Star TSP143IIIU Thermal Printer, 250 Key Fob Pre-Printed (TEEN CENTER), 500 Key Fob Pre-Printed (All Recreation Locations).



City of Santa Fe, New Mexico



2. Provide a detailed explanation of the criteria developed and specified by the department as necessary to perform and/or fulfill the contract.

X

The contractor has affirmed sole source for the services, construction, or items of tangible personal property (*Attach memo from vendor*). Provide documentation of due diligence for other possible vendors/contractors to provide the requested services/goods proved unsuccessful; or

☐

Other: explanation of the reasons, qualifications, proprietary rights, or unique capabilities (*unique and how this uniqueness is substantially related to the intended purpose of the contract*) of the prospective contractor that makes the prospective contractor *the one source* capable of providing the required professional service, service, construction, or item(s) of tangible personal property. (Please do not state the source is the “best” source or the “least costly” source. Those factors do not justify a “sole source.”) *Unique and how this uniqueness is substantially related to the intended purpose of the contract.*

3. Explain why other similar professional services, services, construction, or item(s) of tangible personal property *cannot* meet the intended purpose of the contract.

1. Unlike other, similar software solutions, Vermont Systems’ product is fully compatible with Tyler Munis, which is expected to continue to be the City’s financial software system going forward long-term and book of record.
2. Unlike other, similar software solutions, Vermont Systems’ product includes credit card clearinghouse services, which eliminates the need for a contract with a third-party credit card clearinghouse.
3. Unlike other, similar software solutions, Vermont Systems’ product is not just a solution for the management of recreational centers, but also park facilities and golf courses.




City of Santa Fe, New Mexico




***Approvals:**

Based on the above facts, the City of Santa Fe Purchasing Officer has made the determination that the justification for a Sole Source procurement is in accordance with the State Procurement Code, Section 13-1-126 Sole source procurement., NMSA 1978 and shall be posted for a 30-day period prior to award.



Travis Dutton-Leyda, CPO 7/19/23
Purchasing Officer for the Date
City of Santa Fe

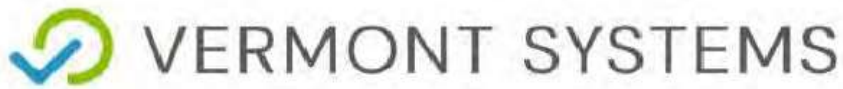
Pursuant to the State Procurement Code, Section 13-1-126 Sole source procurement., NMSA 1978, the 30-day posting period of the Notice of Intent to Award this Sole Source request was met and no obligation to the award to the above referenced contractor were received. *This Sole Source determination will be valid for a period of one (1) year from the date of the award.*



Travis Dutton-Leyda, CPO 8/20/2023
Purchasing Officer for the Date
City of Santa Fe

***Required Attachments:**

- *Letter from Contractor acknowledging they are the only source (on their business letterhead and signed by the head of business or financial operations),***
- *Quote from sole source Contractor***
- *Agenda Item to be presented to City Council if over \$60,000 for Professional Services and \$60,000 for Goods and Non-Professional Services***



VS Quote Number: QUO-13462-M3T4C9

Quote Date: 6/14/23

Prepared For: **City of Santa Fe, NM**

Pricing valid for 120 days

Contact Name: Jackie Henley

Prepared by: Ricci Skitzis

Contact Email: jhenley@santafenm.orgEmail: RicciS@vermontsystems.com

Contact Phone:

Phone: 802-255-2112

Quote Notes: Pricing is based on inclusion of VS Cloud Hosting, RecTrac Subscription Software/Service Items & PayTrac

Sevices	Annual Subscription Price (Recurring)
Vermont Systems Enterprise Software Solution for:	
Includes the following:	
VSI Cloud Hosting for 80 Concurrent Users	
RecTrac Enterprise Software for 80 Concurrent Users	
WebTrac Enterprise Software for eCommerce	
RecTrac/WebTrac modules to include: Activity Registrations, Facility Reservations, POS/Inventory/Tickets	
Pass Management, Locker Rental, League Scheduling, Court Reservations, Golf Tee Times, Mobile RecTrac	
InteliTrac Business Intelligence for 5 Viewers (powered by Sisense embedded Analytics)	
General Ledger Interface, Activity Brochure Custom Interface, SMS Texting (for 60,000 yearly texts)	
Mobile WebTrac (Patron Access), WebTrac Splash Page, RecTrac Single Sign on (SSO), 4 Kiosks,	
PayTrac Credit Card Payments - %X & \$X Per Transaction (eCheck also available)	
PayTrac Payments - Monthly Services per Merchant for 3 Merchants ID's	
Total:	\$90,420.00

Training & Expenses	Qty	Unit	Unit Price	Price
3.1 Discovery Time - Remote (estimated)	16	Hour	\$175.00	\$2,800.00
Setup/Training Time - Remote	132	Hour	\$175.00	\$23,100.00
Setup/Training Time - Golf Tee Times	16	Hour	\$175.00	\$2,800.00
WebTrac Setup & Configuration (estimated)	12	Hour	\$175.00	\$2,100.00
				\$0.00
Total:				\$30,800.00

Hardware	Qty	Unit Price	Price
Star CD3-1616BK55-S2 Cash Drawer Dumb, 16"x16", Blk, 5B/5C, Cable 1 included	20	\$198.00	\$3,960.00
Honeywell Genesis 7680G 1D/2D Barcode scanner - USB	18	\$499.00	\$8,982.00
Star TSP143IIIU, 40 col Thermal Printer, USB, Cutter †(262)	16	\$335.00	\$5,360.00
Key Fob, Teslin, Pre printed 4/1 Qty 250 (Teen Center)	250	\$1.38	\$345.00
Key Fob, Teslin, Pre-printed 4/1 Qty 500 (All Recreation Locations)	500	\$0.95	\$475.00
Shipping	1	\$1,415.00	\$1,415.00
Total:			\$20,537.00

Totals:		
	Services (recurring) (prorated year 1)	\$90,420.00
	Hardware	\$20,537.00
	Training & Expenses	\$30,800.00

Total: \$141,757.00

For planning purposes, the annual recurring cost will be: \$90,420.00

www.vermontsystems.com

sales@vermontsystems.com

Other Products of Possible Interest:

ePACT- Vermont Systems Available Add-on Option: ePACT provides HIPAA compliant Electronic Health Record (EHR), waiver, and emergency form automation. Includes Web & mobile app access to data (including offline) and robust participant communication tools.

† Footnotes:

The RecTrac/WebTrac Enterprise Base Level Application Software is required for all installations. The Base includes: Systems Management, Report Writer, Incident Processing, Dashboard, Global Sales, Household Management, Document Center, Audit Log, POS Lite (Donations, Gift Cards), Touch Processing, ID Integration, Advanced Rule & Fee Configuration, Webspeed Agents, Mobile WebTrac, and the Progress Enterprise RDBMS. VS Premium Support Services are included.

Other available Vermont Systems add-ons options products/services will be priced separately.

Mobile WebTrac provides natively responsive patron access the WebTrac eCommerce Solution. Since Mobile RecTrac is browser based, it is device/OS independent. Functions such enrolling in a class, viewing a calendar of events, making a payment, and displaying their pass barcode are a few of the operations that patrons will be able to access on their phone via the responsive solution. All patron related functions that are developed for WebTrac will be available under this one license fee. In other words, Mobile WebTrac encompasses all of the functions that have been developed across all WebTrac module.

Mobile RecTrac provides access to select staff functions using a smart phone mobile browser. The Mobile RecTrac browser is device/operating system independent. Functions such as Visit Check-In, League Scores Postings, Roster Print, Tee Sheets, and Household Inquiries are a few of the functions that are available to the staff using a smart phone. All current and future Mobile RecTrac staff related functions developed for all RecTrac modules by VSI are included in this one-time license fee, providing that the annual maintenance and support fees are paid.

The General Ledger Interface will create a file consisting of postings made to any GL account with activity in RecTrac for a specified date range. The file format will be in a format that your financial software requires. To determine the file layout and content, we provide a questionnaire to be completed and submitted along with your order. Upon receipt we will contact you to discuss the requirements in relation to the interface. Once requirements are reviewed and approved, the VS Trainer will assist & configure the VS application for the GL interface. The Trainer will show the Customer how to generate the batch export file. At this point, it is the Customer's responsibility to contact the financial software vendor to arrange for assistance to import the daily batch file for automatic posting to the general ledger system. The VS trainer is not responsible for importing the batch files into any third-party application software or for contacting

Important: The RecTrac General Ledger Interface is not and cannot be a cash-receipts interface.

PayTrac - Credit Card Processing transaction fees - Price: X% Per Transaction

PayTrac - Zero fee to you card processing is available with PayTrac Service Fee option. Contact VS Sales team for details.

Hardware (if any) to be sold separately.

Important: Payment Information - All Vermont Systems invoices paid via credit card will have a 3% processing fee applied.

Please refer to Vermont Systems legal page for Privacy Policy information: <https://www.vermontsystems.com/legal>

7/19/2023

City of Santa Fe, NM
200 Lincoln Avenue
Santa Fe, New Mexico 87501

To Whom it May Concern,

Vermont Systems specializes in providing application software and related services for parks and recreation operations across the country. We are proposing our fully hosted, browser-based **RecTrac 3.1** Recreation Tracking Software as the primary solution. RecTrac 3.1 is a comprehensive Parks, Recreation and Golf management system.

This letter confirms that Vermont Systems, Inc. is the sole source for licensing all Vermont Systems application software, as well as for all on-going maintenance support, which includes periodic software upgrades, immediate software repairs, and toll-free telephone support.

Sole Source Justification:

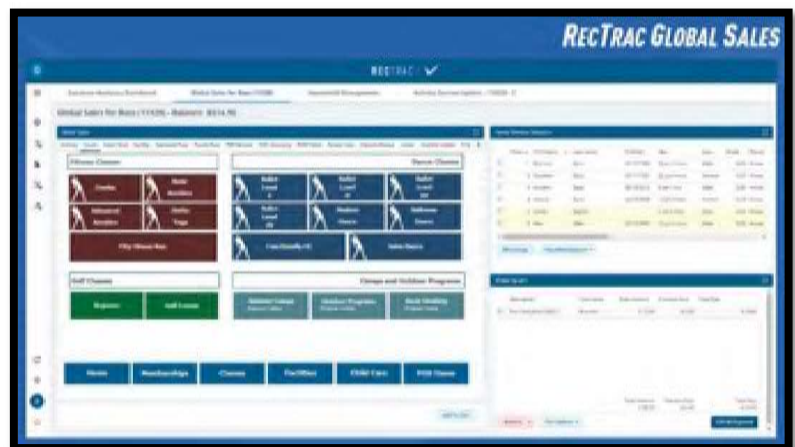
1. Unlike other, similar software solutions, Vermont Systems' product is fully compatible with Tyler Munis, which is expected to continue to be the city's financial software system going forward long-term.
2. Unlike other, similar software solutions, Vermont Systems' product includes credit card clearinghouse services, which eliminates the need for a contract with a third-party credit card clearinghouse.
3. Unlike other, similar software solutions, Vermont Systems' product is not just a solution for the management of recreational centers, but also park facilities and golf courses.

No other vendor has access to Vermont Systems source code, and there are no other authorized Vermont Systems software vendors. This applies to all current VS application software products including RecTrac, MainTrac, GolfTrac, WebTrac, PayTrac, Access Control, Mobile RecTrac, Mobile WebTrac, Mobile MainTrac and Mobile GolfTrac. This is also inclusive of all ID card integration interfaces, and financial application Interfaces including Tyler Munis.

Our proposed RecTrac and WebTrac applications also include the following special characteristics and features:

- Rule and Fees Criteria Engine (providing enhanced business workflow solutions)
- Global Sales across all system modules: one process to transact across all system modules. Sell any services from one process/screen.
- IntelliTrac business Intelligence & analytics
- Built in, standard, custom report building tool
- Screen Design: custom screen building tool providing user defined/flexible system screen layouts
- Touch Screen Sales: Button based item sales across all system modules
- GolfTrac Golf Course/Tee Time management feature (integrated module)
- Enroll-by-Day: "flexible" registration feature
- PayTrac: Fully integrated payment processing for credit cards
- Installment billing (with Autopay)
- WebTrac splash page: customizable Ecommerce landing page
- Finance Software Interface: Standard interface for Tyler Munis
- Single Sign on (SSO)
- SMS Texting
- RecConnect – Target marketing & notification engine (including emails and texts)

Vermont Systems also provides complete managed hosting services for the proposed applications. VS owns and manages redundant servers and communication devices installed at eastern and western data centers. Our solution also includes comprehensive support services. These include unlimited application support, software upgrades with new enhancements, project planning, on-site application training/installation services and available online training. The VS team is here to help ensure your success.



Why Vermont Systems and RecTrac?

- Comprehensive, browser-based solution.
- Innovative user interface.
- Adaptable & flexible.
- Extensive help and support services to empower your team.

Why RecTrac works for the DIRECTOR

- Seamless accounting & accountability.
- Cloud-based and mobile friendly.
- Extensive Reporting.
- Business intelligence & analytics.



Why RecTrac works for the MANAGER

- Database flexibility.
- Customizable screens: build to fit.
- Real-time eCommerce: WebTrac.
- Integrated, PCI compliant credit card processing.

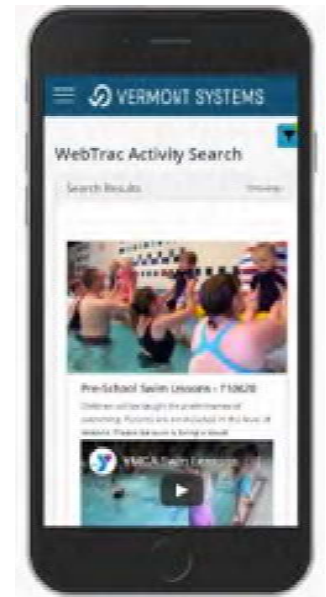
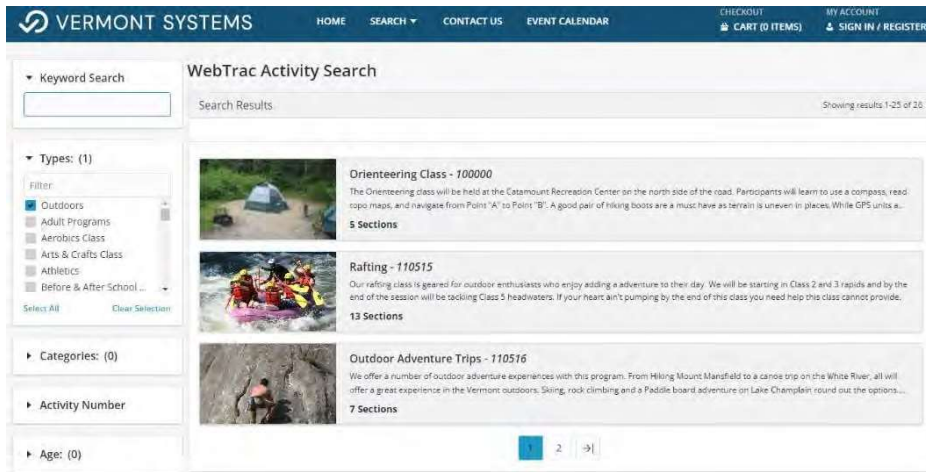
Why RecTrac works for EMPLOYEES

- Simple, easy to learn screens.
- Anywhere access.
- Streamlined end of day reporting.
- Global Sales: "One stop shop".



Why RecTrac works for PATRONS

- Real-time Online Processing: WebTrac.
- Database flexibility.
- Customizable screens: build to fit.



Please feel free to contact us should you require additional information. We look forward to working with you and appreciate your consideration in this proposal process.

Sincerely yours,

David Wirtz

David Wirtz
Director of Sales

Business Licensing and Registration Exception Declaration

The Santa Fe City Code, secs. 18-1 and 18-2, requires persons who do business in the City to license or register their business with the City. However, if a person does not engage in business in New Mexico, that person does not need a City business license for the current calendar year.

Under New Mexico state law, “engaging in business” means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.

For a person who lacks physical presence in this state, including a marketplace provider¹, “engaging in business” means having, in the previous calendar year, total taxable gross receipts from sales, leases, and licenses of tangible personal property, sales of licenses, sales of services, and licenses for use of real property sourced to this state pursuant to NMSA 1978, § 7-1-14, of at least one hundred thousand dollars (\$100,000). NMSA 1978, § 7-9-3.3 (2019).

I, Brian T. Carley, as owner or agent of RecTrac, LLC
(print name) (business name)

declare that in the previous calendar year, this business had less than one hundred thousand dollars (\$100,000) from sales, leases, and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to this state.

By signing this form, I also understand that the City of Santa Fe assumes no tax liability for this business and that the City is under no duty to inform it about actual or potential tax liability.

Brian T. Carley
(Signature)

August 31, 2023
(Date)

¹ "marketplace provider" means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller's behalf, or on the marketplace provider's own behalf, by:

- (1) listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and
- (2) either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider's services; NMSA 1978, §7-9-3(J).



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 201 E 4th Street Suite 625 Cincinnati OH 45202	CONTACT NAME: Susan D. Masters, CIC PHONE (A/C, No, Ext): 513-977-3139 E-MAIL ADDRESS: susan_masters-oh@aig.com FAX (A/C, No): 513-977-4641
INSURED Clubessential Holdings, LLC and all of its subsidiaries 4600 McAuley Place Ste 350 Cincinnati OH 45242-4765	INSURER(S) AFFORDING COVERAGE INSURER A: Continental Insurance Company INSURER B: Valley Forge Insurance Company INSURER C: American Casualty Company of Reading, PA INSURER D: Columbia Casualty Company INSURER E: Continental Casualty Company INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 1207868333**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			6079684571	11/15/2022	11/15/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> HIRED PHYDAM <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			6079684568	11/15/2022	11/15/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired PhyDam \$ 75,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE		6079684604	11/15/2022	11/15/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
C A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A		6079684599 WC679684585	11/15/2022 11/15/2022	11/15/2023 11/15/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER CA & AOS E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D E	Prof/Cyber-CM Crime-3rd Party			652510479 652175238	3/23/2023 11/15/2022	3/23/2024 11/15/2023	Ea Claim/Agg \$10,000,000 Ea Claim \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Complete Named Insured: Clubessential Holdings, LLC; Clubessential, LLC; ClubReady, LLC; LEGP II Blocker (CR), Inc.; iKizmet, Inc; GymHQ, LLC; ClubReady Canada Software, ULC; RecTrac, LLC dba Vermont Systems; PrestoSports, LLC; Immersion Media, Inc dba ScoreShots; SuperFanU, Inc; RW2 Marketing & Design, Inc dba 1-2-1 Marketing; GolfCompete, Inc dba ForeUP; Exerp Buy Co.; Exerp America Inc.; BlueGolf, LLC

OH Employers Defense Liability(Stop Gap): Policy# 6079684571 11/15/2022-11/15/2023 \$1,000,000/\$1,000,000/\$1,000,000

CGL: CNA74872XX(01/15) CNA Technology Broadening Endorsement provides:

-Additional Insured by Contract, Agreement or Permit when required in a written contract with you;
See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City of Santa Fe
200 Lincoln Avenue
Santa Fe NM 87501

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Arthur J. Gallagher Risk Management Services, LLC		NAMED INSURED Clubessential Holdings, LLC and all of its subsidiaries 4600 McAuley Place Ste 350 Cincinnati OH 45242-4765
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

-Waiver of Subrogation when required in a written contract with you

PKG: CNA62665XX(10/15) CNA Paramount Technology Broadening Endorsement provides:

-Employee Dishonesty including ERISA \$50,000 Ea Occ Limit/\$2,500 Deductible

The client does not have any owned/titled vehicles at this time.

BA: CNA83700XX(10/2015) Extended Coverage-BA Plus-For Hired and Non-Owned Autos which provides the following:

-Additional Insureds Required by Written Contracts

-Employee-Hired Autos

-Waiver of Subrogation

-Primary and Non-Contributory When Required By Contract

WC: WC000313(04/84) Blanket Waiver of Subrogation when required in a written contract with you where allowed by State law.

WC: WC420304B(06/14) Texas Blanket Waiver of Subrogation when required in a written contract with you.

Umbrella is follow form regarding underlying: CGL BA WC

Prof/Cyber Retention: \$200,000; Retro Active 3/23/11

Prof/Cyber: GSL2302XX(06/11) CNA EPS+ Technology E&O, Cyber and Multimedia Liability Insurance Policy coverage form:

-pg 3 Automatic Additional Insured status when required by written contract with you;

Prof/Cyber: CNA71810XX(11/12) Automatic Waiver of Subrogation where required by written contract with you.

Third Party Crime Deductible: \$5,000



City of Santa Fe, New Mexico

Memorandum



DATE: September 7, 2023

TO: John Blair;
City Manager

VIA: Emily Oster, Finance Department Director
Travis Dutton-Leyda, Chief Procurement Officer
Layla Archuleta-Maestas; Deputy City Manager *Layla Archuleta-Maestas*
[Layla Archuleta-Maestas \(Sep 8, 2023 10:05 MDT\)](#)

FROM: David C. Tapia; Procurement Coordinator *David C. Tapia*

ITEM AND ISSUE:

ITT Request for the Approval of General Services Agreement in the Total Amount of \$148,667.65 including GRT for Recreational Software; (Vermont Systems); (Audrey Abeyta, adabeyta@santafenm.gov 505-955-5513 and Jaclyn Henley; jhenley@santafenm.gov 505-955-5512)

BACKGROUND AND SUMMARY:

Vermont Systems shall provide RecTrac 3.1 Recreation Tracking Software, their customer reservation and in-house cashiering Enterprise software solution, 148hrs discovery and training, 16hrs Golf and Tee times set up and training, Web Trac set up, 20 Star CD3 Cash Drawer Dumb, 18 Honeywell Genesis Barcode Scanner, 16 Star TSP143IIIU Thermal Printer, 250 Key Fob Pre-Printed (TEEN CENTER), 500 Key Fob Pre-Printed (All Recreation Locations).

PROCUREMENT METHOD:

The procurement method is Sole Source Determination approved 07/19/2023.

CONTRACT NUMBER:

The FY24 Munis contract number is Pending Entry while vendor registers in Munis.

FUNDING SOURCE:

The funding source is:

Fund Name/Number: Services of Other Department / 620

Munis Org Name/Number: ITT EAS / 6203600

Munis Object Name/Number: Software Subscriptions / 530710

ACTION REQUESTED:

ITT respectfully requests your review and approval.



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Vermont Systems Enterprise Software Solutions

Procurement Title: Sole Source Determination Approved 07/19/2023

Procurement Method: State Price Agreement ☐ Cooperative ☐ Sole Source ☒ Other ☐

Exempt ☐ Request For Proposal (RFP) ☐ Invitation To Bid (ITB) ☐ Contract under 60K ☐ Contract over 60K ☒

Department Requesting ITT Staff Name David C. Tapia

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input type="checkbox"/>	<input checked="" type="checkbox"/>	All documentation presented to Committees
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other: Contract to Be Signed by City Manager

David C. Tapia Procurement Coordinator 09/07/2023

Department Rep Printed Name (attesting that all information included)	Title	Date
<u>JosAnn Lovato Montano</u>	Contracts Supervisor	Sep 8, 2023

Purchasing Officer (attesting that all information is reviewed)	Title	Date
<u>Audrey Abeysa</u>		

ITT Representative (attesting that all information is reviewed)	Title	Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # Pending Vendor Registration

Contractor: Vermont Systems

Description: Vermont Systems shall provide RecTrac 3.1 Recreation Tracking Software, their customer reservation and in-house cashing Enterprise software solution, 148hrs discovery and training, 16hrs Golf and Tee times set up and training.

Contract ☒ Agreement ☐ Lease / Rent ☐ Amendment ☐

Term Start Date: 09/12/2023

Term End Date: 09/12/2024

☐ Approved by Council

Date: _____

Contract / Lease: Contract

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

☐ Approved by Council

Date: _____

Amendment is for:

2. HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

3. Procurement History: Original Agreement Procurement Vehicle is Sole Source Determination Approved 07/19/2023

JoAnne Lavato Montano

Sep 8, 2023

Purchasing Officer Review:

Date:

Comment & Exceptions: Sole Source posted for 30 days w/out protest.

4. Funding Source: ITT EAS / Software Subscriptions

Org / Object: 6203600.530710

Andy Hopkins

Andy Hopkins (Sep 8, 2023 11:29 MDT)

Sep 8, 2023

Budget Officer Approval:

Date:

Comment & Exceptions: _____

Staff Contact who completed this form: David C. Tapia

Phone #: 505-955-5523

Email: dctapia@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

Andrey Abeyta

Andrey Abeyta (Sep 7, 2023 15:13 MDT)

ITT Representative (attesting that all information is reviewed)

Title

Date











Request for Signature Vermont Systems Master Agreement

Final Audit Report

2023-09-08

Created:	2023-09-07
By:	David Tapia (dctapia@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_yd4KlvcrR7NwK9WS74bETJuH3Utou0_

"Request for Signature Vermont Systems Master Agreement" History

-  Document created by David Tapia (dctapia@ci.santa-fe.nm.us)
2023-09-07 - 5:52:07 PM GMT- IP address: 63.232.20.2
-  Document emailed to adabeyta@santafenm.gov for signature
2023-09-07 - 5:53:25 PM GMT
-  Email viewed by adabeyta@santafenm.gov
2023-09-07 - 7:04:47 PM GMT- IP address: 104.47.65.254
-  Signer adabeyta@santafenm.gov entered name at signing as Audrey Abeyta
2023-09-07 - 7:13:50 PM GMT- IP address: 97.123.87.202
-  Document e-signed by Audrey Abeyta (adabeyta@santafenm.gov)
Signature Date: 2023-09-07 - 7:13:52 PM GMT - Time Source: server- IP address: 97.123.87.202
-  Document emailed to lsarchulettamaestas@santafenm.gov for signature
2023-09-07 - 7:13:54 PM GMT
-  Email viewed by lsarchulettamaestas@santafenm.gov
2023-09-08 - 4:05:45 PM GMT- IP address: 104.47.64.254
-  Signer lsarchulettamaestas@santafenm.gov entered name at signing as Layla Archuletta-Maestas
2023-09-08 - 4:05:57 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Layla Archuletta-Maestas (lsarchulettamaestas@santafenm.gov)
Signature Date: 2023-09-08 - 4:05:59 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.
2023-09-08 - 4:05:59 PM GMT














23-0555 Vermont Systems

Final Audit Report

2023-09-13

Created:	2023-09-12
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyJLSLPDW4TCtbQnyII6iVJujwYSbM-V2

"23-0555 Vermont Systems" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)
2023-09-12 - 3:53:13 PM GMT- IP address: 63.232.20.2
-  Document emailed to ekoster@santafenm.gov for signature
2023-09-12 - 3:55:10 PM GMT
-  Email viewed by ekoster@santafenm.gov
2023-09-13 - 6:31:43 PM GMT- IP address: 104.47.64.254
-  Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster
2023-09-13 - 6:34:05 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Emily K. Oster (ekoster@santafenm.gov)
Signature Date: 2023-09-13 - 6:34:07 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to jwblair@santafenm.gov for signature
2023-09-13 - 6:34:14 PM GMT
-  Email viewed by jwblair@santafenm.gov
2023-09-13 - 6:45:58 PM GMT- IP address: 166.137.163.69
-  Signer jwblair@santafenm.gov entered name at signing as John Blair
2023-09-13 - 6:46:40 PM GMT- IP address: 166.137.163.69
-  Document e-signed by John Blair (jwblair@santafenm.gov)
Signature Date: 2023-09-13 - 6:46:42 PM GMT - Time Source: server- IP address: 166.137.163.69
-  Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature
2023-09-13 - 6:46:47 PM GMT
-  Email viewed by Kristine Mihelcic (kmmihelcic@santafenm.gov)
2023-09-13 - 7:40:38 PM GMT- IP address: 104.47.65.254



Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

Signature Date: 2023-09-13 - 7:40:51 PM GMT - Time Source: server- IP address: 63.232.20.2



Agreement completed.

2023-09-13 - 7:40:51 PM GMT