



Board of County Commissioners Agenda Request

21

Agenda Item #

Requested Meeting Date: July 14, 2015

Title of Item: Payment Processing Service Agreement

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
Submitted by: Terry Neff, Environmental Services Director		Department: Environmental Services
Presenter (Name and Title): Terry Neff, Environmental Services Director		Estimated Time Needed: N/A
Summary of Issue: Requesting approval to enter into an agreement with Value Payment Systems, LLC for credit card payment services. We are in the process of going on line with our permit program and will need the services for credit card payments. Value Payment Systems, LLC is the company that RT Vision (our permit program administrator) uses with most of their permit programs. The permit applicant pays all the convenience fees associated with any transaction.		
Alternatives, Options, Effects on Others/Comments: Do not offer online permitting, or our office would only be able to review permits online and the applicant would have to mail in permit and associated fees after we approve the permit.		
Recommended Action/Motion: Recommend approving the agreement between Aitkin County Environmental Services and Value payment Systems, LLC.		
Financial Impact: Is there a cost associated with this request? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No What is the total cost, with tax and shipping? \$ Is this budgeted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

PAYMENT PROCESSING SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____ 2015 ("Effective Date") by and between Value Payment Systems, LLC, a Tennessee limited liability company ("VPS"), and _____, ("Merchant").

RECITALS:

WHEREAS, VPS is in the business of providing internet, phone and point of sale based electronic payment services to public and private sector merchants; and

WHEREAS, Merchant desires to provide its Taxpayers ("Taxpayer" or "Taxpayers") the option and opportunity to pay various amounts due to Merchant through VPS as set forth under the terms and conditions below.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1. "Association" is a group of Card issuer banks, debit networks or other method provider, including, without limitation, Visa U.S.A., Inc., MasterCard International, Inc., and the NYCE, Pulse, Star, and Interlink debit networks.
- 1.2. "Association Rules" are the bylaws, rules, and regulations, as they exist from time to time, of the Associations.
- 1.3. "Card" is both (i) the plastic card or other evidence of the account and (ii) the account number, issued to a Cardholder, which you accept from your customers as payment for their purchases from the Merchant, and for the transactions with respect to which VPS agrees to process.
- 1.4. "Cardholder" is the person to whom the Card is issued and who is entitled to use the Card.
- 1.5. "Chargeback" shall mean a reversal of a Card sale the Merchant previously presented, pursuant to Association Rules.
- 1.6. "Convenience Fee" shall mean a fee that is charged to the Taxpayer for the ability to make a payment through a VPS E-Payment System, which fee may be assessed as a percentage of the payment amount or as a fixed fee transaction in accordance with current Association Rules.
- 1.7. "Electronic Payments" shall mean credit card, debit card, Automated Clearing House (ACH) payments or other payment methods such as Bill Me Later®.
- 1.8. "E-Payment System" shall mean the VPS Web E-Payment System and/or VPS Phone E-Payment System and /or POS E-Payment System.
- 1.9. "Phone E-Payment System" shall mean a touch-tone phone payment system that is managed by VPS.
- 1.10. "POS E-Payment System" shall mean a point of sale payment system that is managed by VPS.
- 1.11. "Taxpayer" shall mean a person or business that is eligible to pay, or is required to pay, amounts due to the Merchant.
- 1.12. "Sales Data" is the evidence and electronic record of a sale or lease transaction representing payment by use of a Card or of a refund/credit to a Cardholder.
- 1.13. "Transaction" shall mean all regular, periodic due, fixed dues and assessment payments, and all other amounts, fixed or variable, payable by the Taxpayer to the Merchant.

2.7. Modification of Services.

VPS may, and reserves the right to, modify the features and functionality of the E-Payment System at any time and from time to time without notice; provided, however, that VPS will not modify the E- Payment System in a manner that would, in its sole discretion, significantly adversely affect the use thereof, without providing at least ten (10) days prior notice to Merchant of any such modification.

2.8. Payment for Services.

In consideration for the provision of the aforementioned E-Payment System, Taxpayers will pay the Convenience Fees that are detailed in Schedule B. Such Convenience Fees include fees associated with processing Electronic Payments through the VPS E-Payment System.

VPS is solely responsible for all Processing Fees. These fees include Chargeback Fees, defined as penalties assessed per Chargeback claimed against Merchant's merchant account, but does not include the principal amount associated with a Transaction.

2.9. Additional Representations.

VPS represents, warrants and agrees that it is and will remain in compliance with all applicable federal, state and local laws affecting its business, the ownership of its assets and the privacy and security of information provided by Taxpayers, except as would not have a material adverse effect upon VPS' ability to perform its obligations under this Agreement.

2.10. Association Rules.

Merchant agrees to comply with all Association Rules as may be applicable to the Merchant and in effect from time to time as published by any Association, including, but not limited to, the rules published on Visa U.S.A.'s website and on MasterCard International's website.

2.11. Right to Use Information.

Merchant acknowledges that VPS will compile certain information related to the usage of the E- Payment System and activities thereon. Such information may include, but not limited to, the volume of Transactions and the value of Transactions. Merchant agrees that VPS is authorized to use, reproduce and generally make such information available, as VPS may deem appropriate, provided that in no case will Merchant or any Taxpayer be individually identifiable except as otherwise permitted herein. Neither Merchant nor any Taxpayer shall be entitled to notice of such use, nor any fees derived therefrom; however, Merchant may be provided a copy of each compilation.

2.12. Exclusivity.

During the term of this Agreement, Merchant shall not accept credit card or other Electronic Payments through a similar E-Payment System for Transactions from Taxpayers for the services listed on Schedule A hereto other than through VPS without the prior written consent of VPS.

3. THIRD PARTY PRODUCTS.

3.1. Merchant understands and agrees that VPS may use third party products in connection with the E- Payment System offered hereunder. These products may include firewall security, web server software and encryption software. VPS makes no representation or warranty regarding the performance of such third party software, specifically including any warranty that performance will be uninterrupted or error-free

4. DISCLAIMER OF WARRANTIES.

4.1. Limited Warranties.

VPS will perform the services to be performed by it under this Agreement in a professional and

does not apply to information which is publicly available through authorized disclosure, is known by the receiving party at the time of disclosure, is rightfully obtained from a third party who has the right to disclose it, or which is required by law to be disclosed. All Confidential Information will remain the property of the disclosing party.

6.2. Specific Prohibitions.

Notwithstanding anything contrary in this Agreement, Merchant will not: (a) rent, lease, assign, sublicense, transfer, distribute, allow access to, and/or time share the VPS E-Payment System to or with any third party; (b) disassemble, decompile, decrypt, extract, reverse engineer and/or modify the VPS E-Payment System, or otherwise apply any procedure or process to the VPS E-Payment System in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the VPS E-Payment System or any algorithm, process, procedure or other information contained in the VPS E-Payment System; (c) distribute, facilitate, enable or allow access or linking to the VPS E-Payment System in any manner deemed by VPS in its sole and absolute discretion to be objectionable or harmful to the business and/or reputation of VPS and/or for any unlawful, illegal, pornographic, and/or injurious purpose; (d) make any use of the VPS E-Payment System that impairs the functionality of the VPS E-Payment System; (e) make use of the VPS E-Payment System in any way, other than in accordance with this Agreement or as otherwise instructed by VPS in writing; (f) use the VPS E-Payment System, either directly or indirectly, to develop any product or service that competes with the products and/or services provided by VPS; (g) make any copies of the VPS E-Payment System; (h) circumvent or attempt to circumvent any applicable security measures of the VPS E-Payment System; and/or (i) attempt to access or actually access portions of any VPS systems and/or software not authorized for Merchant's use.

6.3. Compliance with Law and VPS Guidelines.

In connection with the exercise of Merchant rights and obligations under this Agreement (including, without limitation, any related to individual privacy), Merchant will comply, at Merchant's own expense, with all laws, policies, guidelines, regulations, ordinances, orders, and rules applicable to Merchant, Merchant's business, and this Agreement, and all laws, policies, guidelines, regulations, ordinances, orders, and rules of all governmental authorities and/or regulatory bodies having jurisdiction over the subject matter hereof, including, without limitation, the rules promulgated by the Credit Card Associations, the Payment Card Industry (PCI) Data Security Standard, Visa Cardholder Information Security Program (CISP), the MasterCard Site Data Protection Program (SDP), the Federal Trade Commission, the electronic communication rules of the CAN-SPAM Act, and the privacy requirements of the Gramm Leach Bliley Act and regulations promulgated thereunder. Merchant will comply with all the current policies, procedures and guidelines of VPS governing the VPS E-Payment System, including, without limitation, the prohibited activities set forth in Section 6.2. VPS reserves the right to amend, modify or change such policies, procedures, and guidelines at any time. Merchant will not use the VPS E-Payment System in any manner, or in furtherance of any activity that may cause VPS to be subject to investigation, prosecution, and/or legal action. If applicable, Merchant will also provide VPS with a copy of its annual PCI Attestation of Compliance (AOC) and/or PCI Self-Assessment Questionnaire (SAQ) (as applicable based on PCI DSS qualifications) annually

6.4. Data Collection, Privacy and Security.

Merchant is solely responsible for the security of data residing on servers owned or operated by Merchant and all third parties designated by Merchant (e.g., a Web hosting Merchant, processor and other service providers), and for data transmitted to and from VPS and/or third parties. Merchant agrees to provide notice to Taxpayers on all applicable Merchant Web sites (and cause its applicable customers to disclose such information on such applicable customers' Web sites) that discloses how and why personal and financial information is collected and used, including uses governed by this Agreement. Merchant will not use, disclose, sell and/or disseminate any cardholder information obtained in connection with a Transaction (including the names, addresses and card account numbers

party any amounts due and owing to the other party prior to such termination, including, without limitation any amounts owing under Section 2.5.

7.4. Terminals.

Merchant acknowledges and agrees that VPS is permitting Merchant to possess the point of sale terminals solely for the purpose of permitting Taxpayers to initiate Transactions via the E-Payment System. As such, Merchant acknowledges and agrees that VPS is the sole owner of the point of sale terminals, that, except for the foregoing, Merchant has no rights in or to the point of sale terminals (whether as owner, lessor, licensee or otherwise), and that Merchant will immediately deliver all point of sale terminals to VPS upon the earlier of the termination of this Agreement or when any such terminal is no longer being used Taxpayers to initiate Transactions via the E-Payment System. Merchant will keep all point of sale terminals in good order and repair except for normal wear and tear in the ordinary course of business.

7.5. Survival.

Sections 4, 5, 6, 7 and 8 shall survive any termination or expiration of this Agreement.

8. **MISCELLANEOUS.**

8.1. Promotion of Services.

During the term of this Agreement, Merchant shall promote the use by Taxpayers of the VPS E-Payment System including, but not limited to, point of sale materials for the POS E-Payment System, publishing the relevant URL for the Web E-Payment System and telephone number for the Phone E-Payment Solution on the Merchant's website home page, billing departments, notices and all related promotional materials. All published materials referencing VPS or the VPS E-Payment System shall be approved for accuracy by VPS prior to publishing.

8.2. Governing Law: Waiver of Jury Trial.

This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota without reference to conflict of law provisions. All proceedings related to the Agreement shall be venued in the State of Minnesota. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

8.3. Entire Agreement.

This Agreement, including the Schedules, contains the entire understanding and agreement between the parties with respect to its subject matter, superseding all prior or contemporaneous representations, understandings, and any other oral or written agreements between the parties with respect to such subject matter.

8.4. Binding Upon Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Neither this Agreement nor any right, license, privilege or obligation provided herein may be assigned or transferred by either party without the other party's prior written consent, which consent shall not be unreasonably withheld, and any attempted assignment or transfer without such consent is void.

8.5. Relationship of Parties.

The relationship of VPS to Merchant under this Agreement shall be that of an independent contractor and nothing contained in this Agreement shall create or imply an agency relationship between Merchant and VPS, nor shall this Agreement be deemed to constitute a joint venture or partnership

8.7. Captions and Headings.

The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.

8.8. Counterparts.

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement.

8.9. Waiver.

No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

8.10. Severability.

If any provision of this Agreement, or the application thereof, is found invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

8.11. Publicity.

The parties agree that they will not use the other party's name, trademark or service mark or the existence of the contractual relationship in any press release, marketing, promotional, advertising or any other materials without the other party's prior written consent.

8.12. Amendment and Changes.

This Agreement or any provision hereof may not be changed, amended, supplemented, discharged, terminated or otherwise altered except by a statement in writing signed by the party against whom enforcement of same is sought.

8.13. Force Majeure.

Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications, utility, or power failures, equipment failures, labor strife, riots, war, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 8.13 will affect or excuse your liabilities and obligations for Chargebacks, refunds, or unfulfilled products and services.

8.14. Facsimile Signature and Counterparts.

This Agreement may be executed by exchange of signature pages by facsimile, e-mail and in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument.

- The rest of the page is intentionally left blank. -

ValuePaymentSystems

Schedule A: Scope Of Services

Client Name:

Aitkin County, MN

Client Street Address

209 Second Street NW

Client Street Address 2

Room 100

Client City

Aitkin

Client State

Minnesota

Client Zip

56431

Number of Departments Using VPS Services

1

Name of Department

Planning and Zoning

Products this department will be using:

- Standalone End User Validated Site
- API Integrated Site
- Bill Presentment (File Integration)
- POS Terminals
- Virtual Terminal W/ Swipe
- Phone - IVR
- Phone - Live Agent

POS Terminals Needed

USB Card Readers Needed

Duplicate Payment Controls

- Restrict customers from processing more than one payment for the same amount using the same payment method within a 24-hour period.
- Do not restrict customers but include the standard duplicate payment warning message.
- Do not limit the number of payments that can be processed.



SCHEDULE B

Convenience Fee Schedule¹

Payment Methods – Visa (credit and debit), MasterCard (credit and debit), Discover (credit and debit), American Express, PIN debit and PINless debit networks including STAR, NYCE and Pulse. Additional payment methods may be added if mutually agreed upon by both parties.

Third Party Fees – shall mean processor fees and the fees of the Payment Networks (as defined below) for credit or debit card transactions or other electronic payment transactions incurred by VPS including but not limited to interchange, assessments, authorization, risk, transmission and all other similar fees.

Payment Network – shall mean Visa USA, Inc. or Visa International, Inc., MasterCard International, Inc., and any credit or debit card network issuing transaction cards.

MERCHANT PROCESSING FEES FUNDED BY THE CONSTITUENT

ITEM	FEE	FREQUENCY
<u>Non-Tax² Payments</u>		
• Permits		
Visa, MasterCard, Discover and AmEx - credit cards	2.50%	Per transaction
Visa, MasterCard, Discover and AmEx – debit and prepaid cards	1.50%	Per transaction
Electronic Check (eCheck/ACH)	\$1.95 ³	Per transaction

¹ Due to the cost of Visa's Signature Preferred credit card product if the processing volume of the aforementioned Visa credit card exceeds 25% of the overall Visa personal credit card volume, VPS reserves the right to add 0.25% to the convenience fee for Visa's credit card products. Commercial debit cards payments will have the same convenience fee rate as credit cards.

² The minimum credit and debit card convenience fee for non-tax payments is \$2.50.

³ VPS reserves the right to assess a surcharge to the Taxpayer for a dishonored electronic check, ACH or direct debit not to exceed the amounts allowable by state law.

NOTEPAD:

HOLDER CODE
INSURED'S NAME **Value Payment Systems**

VALUPA1
OP ID: MP

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Date **03/17/2015**

*Network Security & Privacy Insurance coverage, Cyber, including Privacy
Notification Costs coverage is included under Professional Liability
Policy (E&O) #MTP0035133 6-20-14/15