

CONTRACT FOR SERVICES

THIS CONTRACT FOR SERVICES (the “Contract”) is entered into as of November 15, 2024 (“Effective Date”) by and between County of Monterey (Sheriff’s Office) (“Client”) and Gila LLC, a Texas limited liability company, d/b/a Municipal Services Bureau (“MSB”). The Client and MSB are sometimes individually referred to as the Party, or collectively referred to as the Parties.

RECITALS

WHEREAS, the Client desires for MSB to serve as their vendor to provide an online payment acceptance solution, including credit/debit card and E- Check; and,

WHEREAS, MSB is in the business of providing payment processing services and desires to provide an online payment acceptance solution, including credit/debit card and E-Check for the Client.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the Parties hereby mutually agree as follows:

AGREEMENT

I. SCOPE OF SERVICES: Client hereby appoints MSB to perform the services described in Exhibit A (“Services”), which is attached hereto and incorporated herein by reference.

The Client may, from time to time, request changes to the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of MSB’s compensation, shall be mutually agreed upon in writing between the Parties.

II. TERM: The initial term of this Contract shall be for five (5) years and shall commence on the Effective Date.

III. COMPENSATION: In consideration of the Services contemplated by this Contract, MSB will receive a fee, as described in Exhibit B, attached hereto and incorporated herein, during the term and in accordance with the provisions of this Contract. MSB’s compensation and the fees set forth in Exhibit B are specifically and expressly approved and authorized by the Client. The compensation described in Exhibit B constitutes all of the compensation payable to MSB in connection with the services set forth in this Contract.

IV. TERMINATION:

- a. Either Party shall have the right to terminate this Contract, with or without cause and without liability or penalty (except as described below), by giving written notice to the other Party of such termination and specifying the effective date

thereof, which notice shall be given at least thirty (30) days before the effective date of such termination. In the event that Client does not promptly refund / repay MSB for a chargeback or third-party assessment (after being notified in writing by MSB), or in the event that MSB reasonably believes that Client is experiencing material financial hardship, then MSB may immediately suspend all services.

V. RECORDS AND CONFIDENTIALITY:

- a. Inspection of Records: MSB agrees that at any time during the term of this Contract, or one (1) year thereafter, upon request of the Client, MSB will make full disclosure to the Client and make available for inspection all of its available records associated with work performed under this Contract.
- b. Confidential Business Information: Both Parties and their authorized representative will maintain the confidentiality of, and take all commercially reasonable efforts, to protect proprietary documents, records, trade secrets, and other records or information provided to them by the other Party, or which they otherwise obtain or gain access to. Both Parties will comply with all applicable privacy and data security laws.

VI. GENERAL PROVISIONS:

- A. Independent Contractor: MSB is an independent contractor and is free to perform services for other clients. Personnel performing services under this Agreement shall at all times be under MSB's exclusive direction and control and shall be employees of the Contractor. Contractor shall pay all wages and salaries and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, benefits, unemployment compensation, worker's compensation, and similar matters.
- B. Governing Law: The substantive laws of the State of California (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Contract and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement.
- C. Cooperation and Compliance: MSB requires cooperation and support from the Client and from the Client's vendor(s) (including its software providers) to provide the Services and to ensure proper functionality; this includes ensuring appropriate data interfaces are established since the Parties acknowledge that MSB cannot perform the Services without the necessary payment related data. The Parties and their vendors will work together in a cooperative, responsive, and supportive manner to help ensure the success of the program.

It is also acknowledged that the Client and any Client vendors in connection with the Services provided may be required to comply with certain laws, rules, or standards, including those applicable to or imposed by the payment card industry or

card networks (e.g. card network rules, PCI-DSS, NACHA and EFTA, and bank card merchant rules and regulations). The Client agrees to fully cooperate with MSB and take reasonable and appropriate steps to help ensure applicable compliance with above referenced rules and requirements. Additionally, the Client agrees to fully assist and cooperate with MSB as needed to ensure that MSB may comply with its obligations under any contracts with its processor or merchant bank or under any other industry laws, rules or standards.

In the event of any changes to laws, regulations, rules, standards, or other material changes impacting compliance, pricing, or operations (including changes imposed upon MSB by its contracted processor, merchant bank or gateways, as well as those required or imposed by the credit card industry, card networks, etc.) that impact this Agreement, the Services or the cost thereof, the Parties will work together in good faith to address, resolve and/or comply with those changes. If the parties cannot agree on any such resolution and continuation of the Services by MSB becomes impossible or impracticable, then MSB may promptly suspend services or terminate this Agreement.

MSB does not review or validate the accuracy or integrity of any of the account information (including the personal information or the amounts due or related account or payment data) that is interfaced or otherwise made available or provided to MSB from either the Client or its software providers. MSB shall not be liable for any incomplete, incorrect or inaccurate account information (or for delays or interruptions in the transmissions or access to said account information).

- D. Agent of the Payee: Client acknowledges that MSB is acting as its agent, processing payments for and on behalf of the Client in the Client's name. MSB shall hold all funds from processed payments in a trust or custodial account in the Client's name, for the exclusive benefit of the Client and to be promptly transmitted and settled to the Client in accordance with Exhibit A; such funds shall not be commingled with MSB's general assets. Payments are considered received by the Client when they are received by MSB, to the full benefit of the consumer / payor (subject to reasonable timelines for updating account balance information). For the avoidance of doubt, nothing in this paragraph shall be construed to prevent MSB from receiving or accessing its compensation pursuant to Exhibit B.
- E. Chargebacks & Third-Party Assessments: Client acknowledges that they are solely liable and responsible for any chargebacks, or any other payments that are in any way reversed or recalled for any reason, along with any other charges or fees associated therewith. Client will also be solely liable and responsible for all amounts imposed or assessed to MSB in connection with this Agreement by third-parties such as, but not limited to, MSB's processor, member/merchant bank, and card network associations to the extent that such amounts are a direct result of Client's non-compliance with Section VI(C) of this Agreement. In the event MSB pays or otherwise covers the cost of the chargeback, fees, fines, or assessments, then Client agrees to promptly repay MSB in full without delay or dispute (this is true even if Client disagrees with or otherwise disputes the chargeback, since MSB

has no discretion or control over chargebacks). Client agrees that MSB may set off any amounts due under this section to MSB from amounts owed to Client.

- F. Indemnification: Each Party shall defend, indemnify and hold the other Party harmless and its officers, directors, employees, and agents from any and all claims, liability, losses, or damages (including reasonable attorneys' fees) arising from or in connection with the indemnifying Party's violation of any applicable federal, state, or local law, statute, ordinance, rule, or regulation.

MSB performs payment processing services as explained herein and assumes no responsibility or liability for the Client's business activities, conduct, operations, or for the accuracy or validity of the account and payment information and data MSB receives from the Client or its software providers. Accordingly, to the extent any claims, liability, losses, or damages are made or incurred by or against MSB that are not related to MSB's role as a payment processor, and instead relate directly or indirectly to the business activities, conduct, account and payment data accuracy or validity, or operations of the Client or its software providers, then Client shall fully defend, indemnify, and hold MSB harmless.

- G. Limitation of Liability and Disclaimer: Unless otherwise expressly stated in this Agreement, and whether or not the Parties have been advised of the possibility of such loss, neither Party shall be liable to the other Party in Contract, tort (including but not limited to warranty, negligence or strict liability) or otherwise for indirect, special, incidental, or consequential loss or damages, loss of revenue, lost profits, business or goodwill.

MSB's liability related to or arising out of this Agreement shall not exceed an amount equal to the lesser of (i) actual monetary damages incurred by Client or (ii) amounts paid to MSB for services under this Agreement during the **12-month** period immediately preceding the date of incident giving rise to the claim or cause of action.

- H. Attorney Fees: The prevailing Party shall have the right to collect from the other Party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.
- I. Notice: All notices, requests, demands, and determinations (individually a "Notice") required under this Contract (other than routine operational communications or as otherwise expressly set forth herein), must be in writing and provided by one or more of the following methods of delivery: personal delivery, Registered or Certified Mail (with return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid and proof of delivery provided by courier), facsimile or email. Notices shall be provided to the appropriate person at the receiving Party at the address listed below or to such address as a Party may designate by a Notice given in compliance with this section.

To Client: Monterey County Sheriff's Office

1414 Natividad Road
Salinas, CA 93906
Attention: Civil Manager
Phone: (831) 755-3712

To MSB: Gila LLC d/b/a Municipal Services Bureau
325 Daniel Zenker Drive, Suite 3
Horseheads, NY 14845
Attention: Elye Sackmary, President
Phone: 512-371-9995
Fax: 1-888-909-4727

- J. Counterparts: This Contract may be executed in one or more counterparts, each of which shall be an original but all of which shall together constitute one and the same document. Facsimile, electronically scanned, or electronically signed copies by either Party shall be binding as if they were original signatures.
- K. No Third-Party Beneficiaries: Nothing in this Contract shall be construed to create any rights in or duties to any third party, nor any liability or standard of care with reference to any third party. This Contract shall not confer any right, or remedy upon any person other than the Parties.
- L. Modification or Amendment: Neither this Contract nor any of its Exhibits may be amended or modified except by a written instrument signed by both Parties.
- M. Compliance with All Laws and Regulations: All of the work performed under this Contract by MSB shall comply with all applicable state and federal laws, rules, and regulations.
- N. Ambiguities: Each Party and its legal counsel have reviewed this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Contract.
- O. Entire Contract: This Contract, together with its exhibits and attachments, is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or modification hereto shall have any force or effect whatsoever.

IN WITNESS HEREOF, the Parties hereto have executed this Contract.

COUNTY OF MONTEREY

Approved as to Legal Form

Signed by:
By: Michael Whilden 10/28/2024 | 8:38 AM PDT
0E98C5BE9B6F476...
County Counsel

Approved as to Fiscal Provisions

Signed by:
By: Jennifer Forsyth 10/28/2024 | 9:36 AM PDT
8DC39FE180A740C...
Auditor-Controller

By: _____
Contracts and Purchasing Officer

GILA LLC d/b/a MUNICIPAL SERVICES BUREAU

By: Elye Sackmary
Elye Sackmary, President

Exhibit A

SCOPE OF SERVICES

1. Definitions

1.1. *Client Account*: The account or accounts established or designated by the Client to receive Payments collected or received by MSB on behalf of the Client pursuant to this Contract.

1.2. *Payment or Payments*: The credit card, debit card or e-check payments received or remitted to MSB for the Client's Obligations.

2. Payment Processing Services.

2.1. *Payments*: MSB will process Payments made for goods and services available from the Client via workflows established by its partner, Teleosoft. MSB shall have no control over the amount made or entered for Payment or to reconcile any account balance versus the Payment made.

2.2. *Payment Processing Methods*: MSB will process Payments made for Obligations through the third-party technology(s) defined herein.

2.3. *Payments Reported*: MSB will report Payments received by MSB, if any, and supply reports through MSB's The Nexus reporting module, which is accessible to authorized users through a web portal.

2.4. *Payments Deposited*: Exclusive of MSB's compensation as set forth herein, MSB will electronically deposit Payments, if any, into the Client Account on a schedule reasonably agreed to by the Parties. MSB is not required or expected to deposit Payments into the Client Account until after MSB has received the funds / Payments (i.e. MSB is not required to front any funds or Payments).

3. Payment Processing Technology

3.1. Teleosoft

3.1.1. MSB will provide an online payment module which is accessed during the online checkout process enabled by Teleosoft through its software. Teleosoft will determine the timing of payment page presentation, and MSB will maintain security and separation of this page from Client and Teleosoft network environments.

3.1.2. If point-of-sale devices are desired by the Client, this will require an amendment to this Agreement.

3.2. Customization Fees: MSB will not assess any fees or costs to the Client for customization

of website appearance, website verbiage content, web services or other information transfer protocols, customization of receipt layouts, integration with the Client's software. If material customization is required after full execution of services herein listed in this Contract, fees for customization, if any, will be mutually agreed by the Parties.

4. Reporting Services: The Client will have access to settlement and other reports related to this Contract via a web portal, referred herein as The Nexus. Such reports shall include but not be limited to: daily transaction detail, daily batch summary and detail, daily incoming chargeback and retrieval detail, monthly statements, and custom fields to track department specific data. MSB will provide the additional reporting services as agreed upon by the Parties.
5. Access: MSB will provide the Client authorized representatives with a logon and password to access their module and perform the administrative functions available through such module. The Client shall be solely responsible for maintaining the confidentiality and security of the logons and passwords provided by MSB. Subject to Section 8 below, MSB shall be entitled to rely on any communications it receives under the Client passwords, logon information, and/or account number as having been sent by the Client, without conducting any further checks as to the identity of the user of such information, and MSB shall have no liability related thereto. However, if MSB reasonably believes any such communication or transaction to be suspicious or a fraudulent activity, it shall notify the Client as set forth in Section 8 below. MSB will not be responsible for the operability or functionality of any of the Client's computer equipment, system, browser or internet connectivity, and shall have no liability related thereto.
6. Notice of Unauthorized Activity: Each Party shall immediately notify the other Party in writing and/or by telephone of any potential theft or fraud or discrepancy in account balances, account activity, account status or unauthorized access to or misuse of confidential information.
7. Logos; Trademarks: The Client grants MSB permission and authorization to use and display the Client's logo and trademarks for use in the services contemplated by this Contract, as agreed upon by the Parties.
8. Merchant Account: The Client will not be required to be the holder of a Merchant Account Agreement. MSB will issue designated MID (Merchant ID) and sub-MID numbers for each and every one of the Client's departments that utilizes MSB's services under this Contract.
9. Limitation of Liability for Third-Party Gateway Providers: The services provided by MSB may involve integration with third-party gateway providers for payment processing and/or other transaction-related services instead of MSB's gateway services, at the Client's discretion. The client acknowledges that MSB is not responsible for, and shall not be held liable for, any issues, failures, or security vulnerabilities related to the performance, availability, accuracy, or security of such third-party gateway providers.

MSB makes no representations or warranties, express or implied, regarding the reliability, timeliness, or security of third-party gateway providers, and assumes no liability for any losses, damages, or claims arising from or in connection with the use of these services.

The Client agrees to use third-party gateway providers at their own risk and shall hold MSB harmless from any claims, damages, or liabilities arising from such use.

Exhibit B - Compensation to MSB – Fees noted below may be paid by Client to MSB or by Customer through the assessment of Service Fees at the time of transaction, at Client’s discretion. Fees noted below are inclusive of card association interchange, dues, and assessments.

The Client may select which fee model is used on a per Merchant Identification # / Per Department basis.

No.	Transaction Type	Cost	Comments
1.	Visa Credit Visa Debit	4.19% 4.19%	Per item fee charged on all settled transactions (\$1.50 minimum)
2.	MasterCard Credit MasterCard Debit	4.19% 4.19%	Per item fee charged on all settled transactions (\$1.50 minimum)
3.	American Express	4.19%	Per item fee charged on all settled transactions (\$1.50 minimum)
4.	Discover	4.19%	Per item fee charged on all settled transactions (\$1.50 minimum)
5.	E-check*	\$1.25	Per item fee charged on all settled transactions. Includes <i>verify ping</i>
6.	Chargebacks (Credit Cards)	Waived	\$15 / per
7.	NSF Returns (E-Check)	Waived	\$15 / per